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Eurocentric Endeavour or Empty Rhetoric? Analysing EU Promotion of Human Rights in China Through a Normative Power Perspective: 1989-2009

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**EUROCENTRIC ENDEAVOUR OR EMPTY RHETORIC?
ANALYSING EU PROMOTION OF HUMAN RIGHTS IN CHINA
THROUGH A NORMATIVE POWER PERSPECTIVE: 1989-2009**

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A thesis submitted for the degree of Doctor of Philosophy

University of Bath

Department of Politics, Languages & International Studies

17 October, 2011

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‘Into the Ocean flows hundreds of rivers and streams; capaciousness is its virtue.’

海纳百川，有容乃大。

----- Zhuangzi (369 BC – 286 BC), Chinese philosopher

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Abstract

The EU's approach towards China on human rights has often been criticised for its conflicting interests, and coordination problems between EU institutions and national member states. However, simply renouncing its efforts in the name of realism or neo-liberalism does not fully explain the EU's commitment to principles of international law, nor does it provide us with understanding as to why its policy has proven so weak and what 'ought' to be done.

This thesis proposes a normative power approach to the study of EU human rights policy towards China between 1989 and 2009. Central to it is the assumption that the EU has been and should be a normative power towards China in the field of human rights. To verify this assumption, I adopt a tri-partite analytical framework drawn from existing 'Normative Power Europe' (NPE) literature in order to make sense of the EU's adherence to human rights norms and its linkage with its external identity, illustrate how norms are diffused through a discursive form of power, and how impact should be evaluated normatively in the case of China.

In so doing, I seek to achieve two central objectives: 1) to add to the empirical richness of NPE literature by analysing the Chinese case; 2) to apply a normative power perspective to the human rights dimension of EU-China relations. To address the first goal, I apply the NPE approach to two selected cases – the death penalty and the Tibet question, which are both high on the EU's human rights agenda and yet are predicted to produce contrasting results. The second aim is met by operationalising the notion of NPE and developing its analytical and empirical relevance. To that end, I intend to make a contribution to the literature by presenting primary findings in the case-studies and a conceptual refinement of NPE as applied to the Chinese case.

List of Abbreviations

AI	Amnesty International
CCP	Chinese Communist Party
CFSP	Common Foreign and Security Policy
COE	Council of Europe
COHOM	Working Party on Human Rights
ECHR	European Convention of Human Rights
ECJ	European Court of Justice
ECOSOC	Economic and Social Council of the United Nations
EESC	European Economic and Social Committee
EIDHR	European Instruments for Democracy and Human Rights
EP	European Parliament
EU	European Union
FIDH	International Federation for Human Rights
GATT	General Agreement on Tariffs and Trade
HRIC	Human Rights in China
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic and Social Rights
ICJ	International Commission of Jurists
NATO	North Atlantic Treaty Organisations
NGO	Non-governmental organisations
NPC	National People's Congress
NPE	Normative Power Europe
SEA	Single European Act
SPC	Supreme People's Court (China)
TEU	Treaty of European Union
TGIE	Tibetan Government in Exile
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCHR	United Nations Commission on Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization

Chapter One

Introduction

Introduction

Until recently, scholarly attention on EU promotion of human rights in its external policies has been mainly approached by rationalists who are interested in explaining what decisions are made and actions taken. In this vein, some focus on the discrepancies between the EU's commitments and actions which has undermined the EU's credibility (Alston 1999; King 1999; Williams 2004); others either see EU promotion of human rights as being triggered by strategic, self-interested thinking (Youngs 2004); or simply being dismal and incoherent at best (AI 2008c: 6-8, Smith 2003: 116-20, Nicolaidis and Lacroix 2002: 143-6), and guilty of double standards at worst (Jurado 2006: 119; Gowan and Brantner 2008: 46; AI 2004: 2). These perspectives often regard normative behaviour as a mere cover for more powerful material motives, and they are too rigid insofar as they exclude non-material dimensions from their understanding of state interests. As constructivism has gained significant weight in the study of International Relations and its sub-field European foreign policy, there is an emerging sense that EU promotion of human rights norms in external policies is not solely derived from a desire to promote its own interests, but can be justified through value-based arguments (Schimmelfennig 2001; Smith 2001; Sjursen 2002; Matlary 2004). Within this paradigm, the student of European foreign policy can better appreciate the importance of non-materialistic objectives, such as the promotion of human rights which has come to represent one of the major foreign policy objectives pursued by the EU and its member states. Moreover, simply renouncing the EU's efforts in the name of realism or neo-liberalism (Nathan 1994; Möller 1996; Wan 2001; Baker 2002; Holslag 2006) does not fully explain the EU's commitment to the principles of international law, nor provide us with explanations as to why the EU has proven so weak in projecting its human rights agenda. Hence, to further this alternative way of understanding and judging the EU's normative influence in the field of human rights, this thesis considers that the

notion of “Normative Power Europe” (NPE) can advance our understanding of why the EU does so, how we should judge its efforts and what ought to be done in the case of China.

1.1 Research Aims

In this thesis, I study the issue of the EU’s promotion of human rights in its external relations. Central to it is the assumption that the EU has been a normative power in China in the field of human rights. To verify this assumption, the proposed perspective focuses on the way in which we understand EU promotion of human rights through a discursive form of power, and how we judge such efforts through normative ethics.

In so doing, I establish a theoretical framework built on the existing literature on ‘Normative Power Europe’ (NPE), and analyse its empirical relevance through a case-study on China by detecting the normative tendency in EU human rights policy from its principle, action and impact. Where EU normative power is manifested, I ask basic questions about China’s socialization and norm internalisation – to what extent it absorbs the norms the EU has promoted through constructive engagement and bilateral dialogue; to what extent China merely adapts itself instrumentally to gain EU economic cooperation, and *vice versa*. Where EU normative power is not apparent, I ask to what extent EU normative power is challenged by China’s views, beliefs and differing priorities; and to what extent the EU’s strategic and economic interests prevail over its normative concern.

The notion of NPE is characterised as producing a scholarship with a special focus on the EU’s normative difference, and the independent power of norms through which the EU seeks to advance to the wider world because of their presumed universality (Diez 2005: 615; Tocci 2008: 4). With a constructivist approach to norms, it is suggested that the EU is ontologically different because of the norms it stands for (Manners 2002: 252; Aggestam 2009: 26). Consequently, this ontological position has several implications for its adaptation to the empirical investigation on China, that is to say, the ways in which I approach the EU, human rights norms and China.

First of all, I conceptualise the EU as being guided by a general sense in NPE literature that the EU is constructed on a normative basis, therefore the EU is treated as one normative

entity and global actor in the international system. This external image is thus made up of EU actors and a selective range of member states, assuming they are all upholding the same human rights standards and sharing the same normative ethos. Unsurprisingly, this picture is far more complex in political realities. When EU actors and individual member states pursue their own agenda or conduct bilateral relations with China in different directions, my attention to these internal divisions is intended to illustrate the sources of influence driven by material interests and normative concerns, rather than concentrating on the institutional dimension, that is – how the various actors and member states of the EU have operated in concert or discord. To that end, the relative absence of European member states in this concept is sufficiently recognised, and is replaced by an emphasis on the power of human rights norms, and how the EU has actively pursued them both internally and externally.

Secondly, central to the notion of NPE is the assumption that European interpretation of universal principles holds power. In this thesis, I define normativity based on the highest level of the international human rights law such as the Universal Declaration of Human Rights (UDHR), which suggests that I approach human rights norms rather objectively between two different normative systems represented by the EU and China. For constructivists, international human rights norms resonate with basic humanistic ideas of empathy and dignity shared in many cultures and societies in the world (Boli and Thomas 1999; Keck and Sikkink 1998). Despite their Western origins, these norms have universalistic qualities which should provide guidance to the fundamental purpose of statehood (Finnemore 1996b: 343). However, human rights norms might be agreed upon within the UN framework; their precise interpretations are subject to specific cultural and institutional settings. To that end, I concur with Donnelly (2007, 1998) that universal human rights, despite their conceptual validity, remain ‘relative’ and therefore limited by historical contingency and cultural particularity of states. The approach to human rights norms as undertaken in this thesis thus situates itself in the middle ground between objectivist ontology to norm compliance and subjectivist ontology to norms contestation, which allows considerable space to recognise China’s social conditions and moral understandings on a case-by-case basis.

Finally, standing for a normative system in its own right, China has mounted a formidable challenge to the normative identity represented by the EU, reinforced by China's expanding economic clout and presence around the world. Therefore, China in this context represents a source of contesting interpretations of norms in the empirical investigation, and a test ground to evaluate the validity of an NPE perspective. Today, human rights issues still highlight the existence of strong sensitivity among the Chinese elites towards Western attitudes that are perceived as threatening or disrespectful of China's national sovereignty. This case study is therefore particularly salient in understanding the challenges faced by the liberal West against the backdrop of the rise of China. Although what I present in this thesis as 'the Chinese view' of human rights is only the Chinese official discourse, including academic officialdom, the alternative views of China's human rights situations from Chinese dissidents, independent scholars, lawyers and other alike serve as a source of references, through which universal values and norms can be better justified.

Since the Tiananmen Square events of 1989, there have been numerous studies on China and international human right regimes, including books and articles encompassing China-US relations and China-UN, and China-Europe relations to a lesser extent (Nathan 1994, 1999; Kent 1995, 1999, 2007; Foot 2001). The body of literature on EU-China human rights relations is modest compared to the much larger quantity of research that has been done on trade relations or geopolitics (Yahuda 1995; Wan 2001; Edmonds 2002; Wong 2005a; Holslag 2006; Shambaugh, Sandschneider and Zhou 2007; Balme 2008a, 2008b, Wiessala, Wilson and Taneja, 2009). Moreover, the human rights dimension of EU-China relations has been traditionally approached from a positivist/institutionalist perspective (Möller 2002; Baker 2002; Algeri 2007) with very few exceptions asking normative questions with substantive discussion (Panebianco 2006; Balme 2008a, 2008b; Mattlin 2010). Therefore, a case study on China using the NPE approach fills in a theoretical gap of normatively theorising EU-China relations and brings new interpretation to bear on this issue. Moreover, the use of three normative ethics prescribes three different ways of arguing and justifying what ought to be done by the EU, which has not been adopted before in any empirical investigation on NPE. Furthermore, European scholars have not systematically tapped into Chinese publications on the study of EU's international role and human rights in such a way as to illuminate the other side of perceptions and mis-

perceptions on specific human rights issues. By comparing these two sub-cases, the thesis reflects on the general pattern of the Chinese case and the extent to which the notion of NPE captures the EU's human rights policy on China. To that end, this thesis adds to the richness of NPE literature in terms of its application to two case-studies on the death penalty and Tibet, as well as a conceptual refinement of NPE to the Chinese case by operationalising this concept and developing its analytical and empirical relevance.

1.2 Research Hypotheses

In this thesis, a tripartite analytical framework is drawn from Manners (2008, 2009a), Tocci (2008) and Forsberg (2009) which have sought to integrate empirical investigation and theoretical understanding of NPE. I follow these examples and address similar questions which are both relevant and applicable to the case of China. This analytical framework involves interpreting the construction of principles, actions and impacts of EU human rights policies that are developed and changed through interaction with China. Within each stage of analysis, I apply NPE critiques which are developed from rival propositions/alternative explanations reflecting on the conflicts between norm and interest, principle and engagement, and other material types of 'power' in the NPE debates. I then apply this framework to two sub-cases which have been both high on the EU's human rights agenda on China over the last two decades.

While adopting NPE as an interpretive approach, I formulate research hypotheses which guide data collection and analysis for a case study (Yin 1994:35; King, Keohane and Verba, 1994: 37). In other words, I seek to both explain and understand the EU's normative power through this empirical investigation. The formulation of the hypotheses relies on the existing NPE literature and preliminary empirical knowledge on the human rights dimension of EU-China relations. Guided by the main hypothesis, each of the three sub-hypotheses deal with the ways in which EU normative identity is constructed, norms are diffused, and normative impacts are interpreted. Each case study is an analogous deployment of the tripartite framework which assesses evidence for and against the three sub-hypotheses.

Main Hypothesis: The EU has been a normative power towards China in the field of human rights since 1989.

The main hypothesis clarifies the boundaries of this thesis with regard to the major actors involved, the issue area in which data shall be collected, and the time period covered by this research. It also reflects on those ‘how’ and ‘why’ questions this thesis aims to address: 1) how and why do human rights become aims and objectives in EU foreign policy? 2) How does the EU act to change norms? 3) How should the impacts of EU normative power be evaluated? These questions therefore lead to three sub-hypotheses which are elaborated below regarding their theoretical meanings and empirical implications.

Sub-hypothesis 1: Human rights norms are constitutive principles of the EU and they have been aims and objectives of European foreign policy towards China.

The first sub-hypothesis concerns the constitutive principles of the EU’s promotion of human rights in its external relations. According to one of Manners’ basic claims about NPE, the EU is a normative power because of its *sui generis* nature, and ‘its normative identity predisposes the EU to act in a normative way’ (2002:252). In this vein, this hypothesis should be understood in a three-fold manner. Firstly, EU external promotion of human rights should stem from its own experience and internal practices. Secondly, human rights should be the principled beliefs of the EU which have constitutive effects on the EU’s identity formation (Finnemore 1996a). Thirdly, it reflects that human rights are aims and objectives of EU foreign policy towards China. To that end, human rights are not only principles of the EU identity and objectives for internal practice; they are also among EU collective agenda in its external relations. This hypothesis therefore reflects one of my central research questions regarding the EU’s adherence to human rights norms and its links with its external identity, interests and behaviour.

In view of virtue ethics rooted in the work of Plato and Aristotle, the character or traits are important in terms of ethical thinking and moral judgement in Western philosophical tradition (Foot 1978, Hursthouse 1999, cited in Manners 2008: 56). This application of virtue ethics in the context of the EU implies that if the EU is a normative power, it should have the virtue or moral character which guides itself in pursuit of external actions. In the

context of EU human rights policy, virtue ethics indicates the EU should ‘live by example’ in the sense that the EU’s internal or external human rights policy should be coherent and consistent (Alston 1999; Coombes 1998; Manners 2008).

To make this assumption empirically accountable, I look for relevant evidence among the EU’s founding documents, and examine the extent to which human rights norms are regarded as a motivating factor in EU foreign policy. Such empirical data encompasses primary legal sources, EU official policy documents and secondary resources drawn from academic discussions. For instance, the Lisbon Treaty {*Article III-193(1)*, *Article 1-2* and *1-3*}, legal sources embedded in the Preamble of the SEA, the Amsterdam and Nice Treaties and the Charter of Fundamental Rights, human rights declarations and resolutions issued by EU institutions, are part of the general principles of the EU, amongst which the UDHR serves as the normative foundation of the EU’s action (Brandtner and Rosas 1998: 469). Analysis of empirical data within a constructivist paradigm then requires explanations regarding the EU’s normative identity, interest and self-binding behaviour, and understanding the construction of principled foreign policy.

Within each sub-case study, I ask how the EU has constructed the specific human rights policy towards China and whether this issue is at a central or marginal position in the EU’s China policy. On normative interests, I ask if and how the EU can be normative while having selfish interests. In so doing, I investigate how a specific normative concern interacts with and is constrained by materialistic interests. On self-binding behaviour, I ask to what extent the human rights policy under investigation is coherent and consistent, in other words, how the EU promotes this norm internally, in comparison to those in its external policies. Through this analysis, I aim to understand the role which human rights norms play in the EU’s China policy formation.

Sub-hypothesis 2: The EU’s promotion of human rights in China is based on the reasoning of legitimated human rights principles which are diffused mainly through the process of persuasion and engagement as opposed to sanction and conditionality.

Merely having normative identity does not make the EU a normative power (Manners 2002: 244). Thus, this second sub-hypothesis addresses the ways in which human rights norms are diffused through a discursive form of power (Diez and Manners 2007: 187). This stage of analysis goes on looking at normative actions taken by the EU to promote its principled beliefs. Such actions include persuasion, argumentation, or conferral of shame or prestige, rather than coercion or material motivations. This sub-hypothesis thus reflects the nature of NPE at work with emphasis on both the normative power mechanisms and the normative character of EU foreign policy instruments.

In view of deontological ethics drawn from the Kantian notion of public reasoning, the character of the action itself is an important process in terms of reaching valid moral judgements (O'Neil 2000, in Manners 2008: 57). Compared to virtue ethics, deontological ethics does not seem to take good values for granted, but establishes them through practice of reasoning and law-making. The application of deontological ethics to NPE implies that the EU works to activate commitment and persuade by 'being reasonable'; in other words, by referring to the general rules and practices, or cooperating with the third countries in form of engagement and dialogue (Manners 2008: 57-8; Forsberg 2009: 13).

In order to verify this hypothesis empirically, I begin with identifying whether human rights norms that the EU promotes in its external relations are indeed universal norms. From an NPE perspective, the EU's activities should be, first and foremost, based on general principles of the highest level of International Human Rights Law which are binding on all subjects of international law, including the EU itself.

Moreover, the nature of norm diffusion also matters, especially when normative power is conceptualised alongside, and coexists with, military and economic power as an ontologically different concept (Diez and Manners 2007). Normative power as 'ideological power' or 'power of opinion' can be detached from, but not necessarily incompatible with, military and economic power (Diez and Manners 2007: 167). As opposed to other less or non-normative means, such as extensive use of material incentives including positive/negative conditionality, sanctions and military actions, the normative nature of the diffusion mechanisms is crucial to the understanding of NPE (Manners 2009a:13).

Regarding how norms are diffused normatively, Foot (2001: 9) suggests that, in the absence of a direct enforcement mechanism, one has to rely on moral persuasion, argumentation, shaming to invoke voluntary compliance in circumstances in which norms are well-established international standards. For Tocci (2008: 9), methods based on dialogue, cooperation and engagement are normative because they reduce the risks of ‘imposing allegedly “universal” norms through sheer power and against the needs and desires of local populations in third countries’. The use of persuasion, through constructive engagement and conferral of shame or prestige, is thus important if the EU is to be seen to ‘be reasonable’ in human rights policy (Manners 2009b: 795).

Drawn from Manners (2002, 2008, 2009a, 2009b, 2009c), and his critics (Forsberg 2009, Aggestam 2009), I identify five norm diffusion mechanisms underlying policy approaches adopted by the EU towards China between 1989 and 2009, and evaluate their normativity through two case studies (Forsberg 2009: 20; Tocci 2008: 10). These five mechanisms include persuasion, invoking norms, shaping the discourse, power of example and conferral of prestige or shame. For instance, I seek to identify and evaluate the EU-China human rights dialogue as a form of persuasion that was intended to create opportunities to gain engagement, critical discussion and further cooperation with China on human rights issues (Baker 2002; Panebianco 2006: 140).

Sub-hypothesis 3: The normative impact of EU human rights policy in China includes transformation of Chinese official discourse, increasing cooperation with the EU, domestic policy reform and local ownership.

The final stage of analysis examines the impact of the normative principles and actions. The role of socialisation, partnership, and local ownership is important from a normative power perspective if the EU is seen to be ‘doing least harm’ and achieving ideational impact through its foreign policy (Manners 2008: 57). This hypothesis thus reflects on the third research question with regard to what constitutes normative impact. For Manners (2002: 238), NPE has a particular emphasis on achieving ideational impact as compared to other discourses, such as soft power (Nye 2002; 2005), however, NPE has been criticised for not having specific means to evaluate it (Toje 2008, Forsberg 2009).

In view of consequentialist ethics rooted in utilitarianism of Jeremy Bentham and John Stuart Mill, the consequences of a particular action form the basis for moral judgement about that action and its implications for others (Anscombe 1958, in Manners 2008: 58). Applying this ethical thinking to NPE, Manners (2008: 59) suggests that the EU should ‘do least harm’; therefore, the EU should think reflexively, encourage local ownership and empower the others. Socialisation, in this case, refers to the process by which international norms are internalised and implemented domestically (Risse and Skkink 1999:5).

In the Chinese context, I seek to apply a constructivist perspective to socialisation and consequentialist ethics to local ownership as the ‘right’ consequence to trace and evaluate EU normative impact. However, the difficulty in identifying the socialisation process and the EU’s impact lie in the lack of transparency in EU-China human rights dialogue and cooperation programmes, as well as problems with the effectiveness of EU human rights agenda towards a strong authoritarian regime with weak civil society in which Western human rights policies are often viewed as an intervening variable as opposed to autonomous variable such as sovereignty or the need for internal stability (Kent 1999:13, Peerenboom 2002: 191). Moreover, without developing precise causal variables accounting for norm compliance, a normative approach has a methodological problem of isolating the EU’s normative impact from that of other actors and norm entrepreneurs, such as the UN and the US.

To address these problems, I suggest assessing the normative impact on a case-by-case basis through a ‘longitudinal interpretation’ (Manners 2009a: 19). Thus, an in-depth analysis of interaction between the EU policy and the Chinese socialisation process is likely to establish a traceable path between the EU’s action/inaction and delineating results (Tocci 2008: 11-2).

1.3 Methodology

The examination of EU human rights policy in the case of China through a normative perspective indicates an interpretive/constructivist approach to the EU’s world view and the normative justification of EU norms in the eyes of the Chinese. Thus, a qualitative methodology is more suited to answer research questions that are to do with the EU’s self-

perception/international role, power of norms and Chinese perceptions. I therefore approach the complex normative dimension of EU-China relations through an in-depth case-study method and draw cross-case synthesis of the findings. For Yin (2004:2), the case study method is uniquely suited for making sense of complex social phenomena, it also sits well with the elements of understanding and explanation underlying the NPE analytical framework developed in this thesis (Yin 2009: 6-9; Manners 2006c, 2009a). This section elaborates on the rationale behind the choice of this research method.

1.3.1 China as a ‘Least-Likely’ Case

According to Eckstein (1975:118), a least-likely case is ‘especially tailored to confirmation’ of a theory, despite being a ‘tough test’ case in which the theory in question is unlikely to provide a good explanation. Since a theory that fits even a case in which it is least likely to gain confidence, it is recognised as being more robust than previously expected (Eckstein 1975: 119).

In discussing the prospect of empirical study on NPE, Manners predicts that China represents a country of ‘axis of ego’ (2008: 60) which could be a ‘black hole’ of the EU’s normative power (2006b: 411). I select China as ‘a least likely case study’ by virtue of its history, cultural traditions, and power status, which is likely to provide both the concept of normative power and the EU as a normative power a rigorous test. Because of its ascribed power status, its growing economic and strategic muscles, its position as a Permanent Member of the Security Council, and that it has signed the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural rights (ICESCR) but has not ratified the former, China is a special if not crucial case in international human rights regime. When it comes to EU promotion of human rights towards third countries, it is argued that there is no country like China with which the EU’s ambition and leverage are so mismatched (Fox and Godement 2009: 63). Chris Patten notices that China has been ‘the most embarrassing indication of the gulf between European rhetoric and reality’ (Pattern 1998: 303). For these precise reasons, China as a least-likely case is of importance, not just by being a litmus test of NPE as an empirically valid and logically coherent analytical tool, but also providing an enriched and deeper understanding of the EU’s global influence in the face of material interests and strategic considerations.

1.3.2 Sub-Case Studies: a Multiple-Case Design

Due to the complexity of this topic, a single-case design could not adequately represent the key human rights issues in contemporary EU-China relations. Following ‘the theoretical replication logic’ (Yin 1984, 1994, 2009), I formulate a multiple-case study design to ensure a robust testing of NPE propositions within the Chinese case. For Yin (1984, 1994, 2009), the underlying logic of replication is to treat multiple cases as a series of experiments, with each case either confirming or disconfirming the hypotheses. Cases that confirm the research hypotheses reassure the validity of the theory; whereas those which disconfirm the hypotheses might provide an opportunity to refine or expand the theory (Yin 1984, 2009; Eisenhardt 1989).

Under this design, I examine two cases: the death penalty and the Tibet question. Following a set of rationales derived from NPE literature review and preliminary empirical investigation, these two sub-cases are anticipated to offer contrasting conditions. If the findings support this anticipatable contrast, the result should indicate the robustness of the theory, as the NPE analytical framework in this case (Yin 2009: 61).

The rationale for selecting these two cases is guided by the relevance of their characteristics to the research objectives and their representativeness of key issues in a complementary manner (George and Bennett 2004: 83). A number of arguments can be expanded on the selection criteria. First of all, these two cases are among the key issues on EU normative agenda as indicated in official documents, NGO reports and numerous journalistic accounts. They are selected not only because they attract attention, but also on the basis that they fit in the requirements of NPE propositions. The abolishment of the death penalty, protection of minority rights, and religious freedom are matters of principles to many Europeans. Moreover, the ways in which these issues are addressed by the EU are subject to the general guideline of using the dialogue approach and constructive engagement, rather than coercive measures which are central to the NPE analysis. Furthermore, they are also the subject of active debates in China both in official and academic discourses, which allow the aspect of norm contestation to be sufficiently addressed in the case-studies. Lastly, the case selection is further justified in the way that these cases’ characteristics and findings supplement those of one another. In the following section, I elaborate on this by illustrating how the data from one case might fill the gaps

left by the other; and why the findings from such a ‘two-tailed’ case design are compelling and potentially respond well to critiques and shortcomings of NPE.

1.3.2.1 The Death Penalty Case

The death penalty issue makes perhaps the most compelling argument on NPE (Manners 2002, Lerch and Schwellnes 2006). Empirically, this norm has been unanimously internalised and implemented within all EU member states, which makes the EU’s external promotion of this norm more coherent and potentially more effective. In the human rights dimension of EU-China relations, the death penalty issue has been one of the central themes (Schabas 2009: 8). On the surface, it seems that the two sides are still at polar opposites. While the EU is a ‘death penalty – free zone’, China’s annual executions outnumber those of the rest of the world combined, and China has not ratified any international treaty concerning capital punishment, hence is under no legal obligation to commit to this issue (AI 2008b). However, China’s death penalty rhetoric has changed over the years and the annual number of executions is expected to drop according to Chinese state media and some NGO sources (HRIC and FIDH 2004).¹ Therefore, the death penalty issue is likely to make a strong case for the normative power of the EU, whose normative impacts on China can be isolated from those of the US or other international human rights regime.

1.3.2.2 The Issue of Tibet

While the death penalty case is most likely to confirm NPE hypotheses, the Tibetan case is mostly likely to disconfirm them, given that China has not fundamentally changed its official discourse regarding Tibet’s status quo, nor has Chinese domestic policy towards Tibet given in to any external pressure which China had always bitterly opposed as interference of its internal affairs.² On the empirical ground, the death penalty might be an ‘easy’ case for NPE; however, it risks the danger of overestimating the EU’s normative identity and interests which imply the EU acts with a single collective principle of promoting universal norms for the common good of the world. As observed by King (1999: 335-7), the EU’s promotion of human rights in its external relations has often been

¹ Xinhua News Agency, *China changes law to limit death penalty*, 31 October 2006.

² Xinhua News Agency, *The Chinese Side Express Strong Dissatisfaction at the EU Foreign Ministers Council’s Unofficial Discussion and Comments on the Situation in Tibet*, 30 March 2008

constrained by the nature of its institutional settings, different national interests and visions for foreign policy, and divergence in Member States' own bilateral relations with third countries. Thus, the Tibetan case serves to capture the strong and weak normative behaviour among different EU institutions and some Member States, despite a similar rhetoric being adopted to confirm their official positions on China's sovereignty and the human rights situation in Tibet. From a positivist and rationalist account, the Tibet case might hardly be a successful story as the EU has little leverage to influence China's Tibet policy, including 'minority' rights as part of the larger human rights rubric. Therefore, it merits a close examination as to why it has been difficult for the EU to project its normative agenda, through which NPE could offer us some nuances in understanding and judging policy effectiveness.

1.3.3 Sources of Empirical Data

Aligned with a normative/constructivist approach, the empirical findings in this thesis are exclusively qualitative. This section presents a description of the source of empirical evidence. In the following chapters, I use the Chicago referencing system for policy documents and journalistic reports in order to highlight these findings, whilst other secondary literature remains cited in the Harvard style.

Documentation

Concerning the EU's human rights policy making in each case study, I conduct a comprehensive analysis of documentation regarding legal provisions, institutional arrangements and major actors. By extensively reviewing EU legal and policy documents from the European Documentation Centre at the University of Bath, the ECLAS (the European Commission's library database), and information online, I first draw chronological reports for the narrative chapter (chpt.3) and two sub-cases (chpt.3&4) on the development of EU human rights agenda and activities, and how the EU responded to key events. I then present these findings in narrative structures within each analytical section (Silverman 2006:164). During this process, I apply qualitative content analysis in an interpretive fashion (Esterberg 2002: 172), while looking into the ways in which certain human rights concerns are expressed, and the underlying meanings in the change of words or in tone of language on key issues in EU documents on China.

Legal framework

In viewing the EU's definitions on human rights in each individual case, I look at the extent to which these definitions are in tune with international standards. In so doing, I review human rights provisions in the EU's legal framework, and seek to identify the legal bases for assessing human rights as constitutive and legitimated principles of EU foreign policy. The basis for data selection is centred on NPE hypotheses and guided by virtue ethics and deontological ethics. In operational terms, it refers to a set of questions for collecting data from documents produced by major EU institutions: 1) whether the EU's primary references are European or indeed international standards in defining human rights; 2) whether those international standards are accepted by all the member states; 3) whether they are still evolving; 4) how human rights promotion has become an issue for foreign policy cooperation.

The Council

The Council has become the institution most capable of dealing with human rights issues for both foreign and domestic policies of member states, particularly after *the Amsterdam Treaty*. In order to identify the Council's activities in dealing with China and human rights, I analyse the Council's regulations, statements, declarations by the Presidency, conclusions, and the Annual Reports on Human Rights (1998-2009). The Council's conclusions and reports by its Working Party on Human Rights (COHOM) are key materials in forming the basis of analysis on the implementation of practical measures in terms of achieving specific policy objectives. Throughout this process I trace how particular human rights concerns have been coordinated among Member States in dealing with China. In particular, I ask to what extent the Council has had a top-down effect in harmonising divergent views among member states; to what extent certain member states, such as France and Germany, have been able to project their own interests through a bottom-up approach in shaping the Council's collective stance, as well as the role of the rotating Presidency in influencing the way in which the Council's position on China's human rights issues.

The Commission

The Commission is responsible for the coordination and implementation of policies (Art. J.8, TEU); therefore it plays a constructive role in supporting human rights initiatives in third countries. I therefore review the Commission's Communications (1995; 1998; 2001; 2006) to the Council and the Parliament on China, archival records from the Commission's

delegation in Beijing, including China strategy papers (2002; 2007a). In so doing, I map out all the Commission's activities in the area of human rights concerning the case in question between 1989 and 2009, and seek to identify strategies and instruments set out in the Communications aiming at enhancing the consistency and effectiveness of the EU's human rights policy. Attention is also given to cooperation programmes funded by the Commission that have been linked to human rights. In particular, I look into two areas: strengthening the rule of law and promoting legal reforms; and training and academic exchanges in which issues of the death penalty and Tibet have been addressed. To find out all the relevant projects that have been initiated, including those which are proposed, ongoing and ended, I use the Commission's China strategy papers, national indicative programmes, press releases and a list of projects on co-operation and partnership available online or obtained through European Commission library catalogue (ECLAS). Detail of these projects includes budget, objectives and approaches, participants, time frame, stage of implementation, and results. To evaluate the results of the Commission's cooperation and partnership initiatives, I look for the insights from Commission's own evaluations, and those by NGOs or academics. The basis for data selection is guided by two questions: whether cooperation is a better alternative to the coercive and confrontational measures in the past; and what constitutes 'concrete' progress in the Chinese context. During these investigations, the Chinese government's coordination and consultation with EU initiated programmes, including official participation, signed agreements and Chinese budgetary contribution, are the key indicators for evaluating the EU's capacity to achieve normative impact through partnership and local-ownership.

The Parliament

The European Parliament (EP) has played the most proactive role concerning both case studies in this thesis. Major instruments and activities developed by the EP regarding human rights include resolutions, delegations and public hearings. I first look at EP resolutions upon which the death penalty and Tibet are concerned. I also examine EP reports on the inter-parliamentary delegation through which the EU has established ties with China's National People's Congress, and meetings reports with NGOs and press releases. Furthermore, I examine recordings and transcripts of public hearings organised by the Subcommittee on Human Rights (DROI), and the meeting reports of the Parliament's Tibet Intergroup. In addition, the EU's *Sakharov* Prize and the Annual Report on Human

Rights as the EP's own initiative provide an indication of the EP's priorities. Reviewing documentation on these EP instruments is particularly useful in evaluating NPE in terms of conflicting interests and norms, verbal persuasion and shaming as mechanisms of norm diffusion.

The Council of Europe

The Council of Europe (CoE) has played an important role in both ensuring the abolition of capital punishment to become a norm in Western Europe and developing regional human rights mechanisms to address minority rights. Thus, the CoE's publications on the abolition of capital punishment in Europe and minority rights are important secondary data in terms of understanding the common cultural, legal and political basis of the EU.

Other Sources

Academic journals and published books by Chinese top thinkers of international relations and EU studies are used as complimentary materials, formulating the body of literature that sketches out the landscape of perceptions amongst Chinese scholarly elites engaging in EU studies.³ The selection criteria is particularly concerning how the EU's international role in the field of human rights is perceived by China's EU experts and think-tanks studying EU-China relations.

Due to the lack of official data in some policy instruments, such as the EU-China human rights dialogue, the data collection requires not only drawing extensively on EU official source, but also using materials from newspaper archives, media interviews with political elites. These materials concerns the analytical timeframe between 1989 and 2009, however, my attention is primarily centred around major events in which we have seen a surge in public inquiry into the EU's human rights policy on China. For instance, in the year 2008

³ The Chinese Institute of Contemporary International Relations (CICIR) has been the single institution and think tank that drafted 2003 China's Europe Policy Paper. It has a full-scale research institute specialising in the study of EU. It publishes a bi-monthly journal *Contemporary International Relations*, which is one of the most important Chinese journals for European studies and international studies in general.

The other think tank is China Institute of International Studies (CIIS) which is a research office on European studies with research fellows experienced in China-Europe diplomatic careers. Affiliated with the Foreign Ministry, the Institute is closer to foreign policy-making than most other institute. The bi-monthly *International Studies* edited by the Institute is also among the leading Chinese journals, which publishes quite a number of papers on European studies. Its European section has a handful of five top researchers.

when China was to hold the Olympic Games in Beijing, human rights, especially the Tibet question once again received intensive media attention from both sides.

Additionally, Amnesty International, International Federation for Human Rights (FIDH) and Human Rights in China (HRIC) are leading human rights NGOs who have produced extensive and regular reports and evaluations on the EU and Member States' human rights policy towards China, especially on bilateral dialogues and aid programmes which make up of an important external reference for establishing benchmarks for assessing NPE.

The importance of combining official sources, media accounts, NGO perspectives and academic writings for the data source is two-fold. Firstly, they are important materials in terms of establishing chains of events for each individual case. Secondly, presenting how officials, academics and NGOs' views on each particular issue differ from one another enables us to avoid selective data usage in favour of NPE hypotheses.

Managing Data

In the process of analysing data, I begin with compiling chronological events for the narrative/background chapter (*chapter 3*) and two sub-cases (*chapter 4&5*). This procedure has an important analytic purpose in which the trend of data can be delineated within each chapter to either confirm or disconfirm the trend presumed by NPE that the EU has become an emerging foreign policy actor driven by normative principles (Yin 2003: 122-127). In each sub-case, I seek to place the chronological events and descriptive summaries within which the meanings of policy change become explicable within the NPE framework of analysis (King *et al.*, 1994: 36).

For *Chapter Three*, I draw a historical narrative from primary and secondary source which serves as an 'umbrella' for the sub-cases. By building a descriptive account of chronological events, I seek to provide a general explanation of the trend in the EU's China policy on human rights.

For the death penalty case in *Chapter Four*, Chinese history, law and practice on the death penalty are given a descriptive summary, which I seek to compare with the state of the global abolitionist movement and the relevant cultural, moral and legal traditions in Europe.

This relies on both primary and secondary data on evidence and citations from legal studies and policy documentation on EU law, international law and Chinese domestic law. To verify normative action, I look at the EU's means of influence by reviewing the Presidency's declarations, the Council's press releases on the EU-China human rights dialogue, documentation regarding legal & judicial training and cooperation programmes funded by the EU, NGO accounts on individual cases and events. Data collection on the normative impact involves reviewing a combination of Chinese official statements, NGO reports, academic writings, and media reporting on Chinese reform in criminal judiciary procedures and Chinese participants' accounts on EU sponsored legal seminars and training programmes particularly since 1998.

For the Tibetan case in *Chapter Five*, two sides have subscribed to completely different paradigms in understanding the issue of Tibet. In order to interpret this gulf in perception, I first summarise the history and politics of the Tibet question, and identify international legal principles which provide guidance for the EU's response, and then compare them to those rendered in Chinese official discourse on Tibet. For normative action, I look at how EU institutions and member states respond to major events and individual cases. Regarding impact, I examine the EU's policy impact on individual cases, the EU-China relations and international visibility of the Tibetan cause. In so doing, I rely on a combination of primary source of official documents including statements and declarations from both sides and secondary data by Western and Chinese historians on Tibet, media and NGO reports. In this way, I seek to give an account of reasons for or meanings of the EU's human rights concerns over Tibet as well as China's sensitivity on this issue.

1.3.4 Analytical Timeframe

The decision to focus on the post-1989 era to 2009 is justified in twofold. Firstly, the year 1989 is undoubtedly significant in the Chinese case. The issue of human rights had not been a major concern between the EC member states and China before the events of Tiananmen in 1989 (Baker 2002: 47). This is not unique to Western Europe but the international community in general. Not until the post-Cold War period, in particular after the shock of the Tiananmen crackdown did human rights issues in China have been attached greater importance and attention in international politics (Cohen 1987; Kent 1995). Secondly, Manners (2009a:2) suggests that 'normative power works like "water on stone",

not like “napalm in the morning”, by which he suggest the use of a ‘longitudinal interpretation’ to address the issue of change in the perception of normality (Manner 2009a:19; Ruane 2006: 94). In this thesis, the types of human rights norms in the EU’s China policy are subject to change through its interaction with China, the proposed research timescale allows me to adopt the longest possible timeframe at the time of the research design, so as to avoid falsification due to ‘momentary fluctuation’ (Manners 2009a: 19).

1.4 Summary of Chapters

This thesis consists of six chapters. This introductory chapter is followed by a presentation of the theoretical framework in *Chapter Two*. The aim is to develop a conceptual framework based on the existing NPE literature that establishes linkage between NPE hypothesis developed within the Chinese case and empirical data to verify these propositions. It is structured in three main parts that details a review of current NPE literature, clarification on the condition of norm contestation in the Chinese case, and a tripartite analytical framework.

Chapter Three presents an analytical account on the evolution of EU-China relations in the field of human rights from 1989 to 2009. It does so by situating this historical narrative alongside the EU’s search for its global role. The first section is divided into two main phases based on the different nature of policy instruments the EU had adopted to promote human rights in China. It then asks whether this change is driven by normative concerns; whether member states’ approaches towards China have converged, diverged or harmonised as the European integration processes has gone further towards formulating a value-driven international identity. The second section looks at how China has responded towards the EU’s emerging global role as a normative power and its role in the field of human rights. It aims to understand how the Chinese official discourse perceives the EU as an international actor, and the role of human rights in EU-China relations by Chinese officials and academic elite. Therefore, this chapter not only sets the scene for the subsequent case-studies, it also lays the basis for evaluating the question of legitimacy of normative power by looking at the source of normative justification and legitimacy of the EU’s promotion of human rights in the eyes of the Chinese .

Following a theoretical replication logic (Yin 1984, 1994), *Chapter Four* and *Five* apply two case studies to the framework of analysis developed in *Chapter Two*. *Chapter Four* applies the NPE perspective to a case-study on the death penalty. The first section looks at the EU's regional/global leadership in making the abolition of the death penalty a foreign policy objective and precondition for its membership. The second section discusses EU normative means of influence on China's death penalty stance, including human rights dialogue, EU-China legal/judicial cooperation and judicial programs for lawyers and judges. The third section analyses empirical findings by building an explanation regarding causal connections between EU-China human rights dialogue/accompanying activities, and any improvements in the area of capital punishment compared to China's situation since the EU adopted *Guidelines to EU policy towards Third Countries on the Death Penalty* in 1998.

Chapter Five uses the same analytical framework to look at the Tibet question. The first section identifies the scope of norms involved in the EU-China debates on the issue of Tibet, and assesses the degree of norm contestation. In order to signify how EU actors are divided in their approaches in this case, the second section focuses on policy behaviour of three EU actors – the European Parliament, the Council of the EU and the European Commission. On the national level, member states' attitudes towards the Tibet issue are categorised into groups of approximation in order to understand the conflicts of interests that weaken the EU's human rights agenda. It then concludes with a range of policy instruments that the EU has adopted to influence China on the issue of Tibet, and compares them based on their normative characters, and seeks for systematic explanations as to why the EU has proven ineffective in projecting its normative agenda on this issue.

Chapter Six draws on the empirical chapters, assesses the overall pattern of the Chinese case and reflects upon the meaningfulness of NPE as an analytical approach. First, it evaluates the significance of each independent variable - principles, actions and impacts – by incorporating the findings from two case-studies. It then assesses the value and deficiencies of the NPE approach, and the validity of a multi-dimensional understanding of power and effectiveness in normative theorising. Finally, it opens up the discussion on how this research project may develop in the future.

Chapter Two

Normative Power Europe as a Theoretical Perspective

Introduction

This chapter proposes the ‘Normative Power Europe’ (NPE) perspective to the study of EU promotion of human rights towards China. The theoretical goal is to identify an analytical framework that examines the extent to which the EU is a normative power for empirical investigation in the following chapters. Central to this chapter is the way in which we use this EU self-perception and discourse of political rhetoric, to evaluate empirically how normative the EU has been through the case study on China.

The framework comprises three sections: the notion of NPE, conditions of norm contestation in the case of China, and a tripartite analytical framework. *Section one* justifies how normative theorizing can contribute to our understanding of the subject. By critically reviewing the current literature, it demonstrates the usefulness and underlying problems of the notion of NPE as an analytical tool. *Section Two* introduces the particular challenges that the Chinese case has posed to the notion of NPE by summarising Chinese perceptions of the EU’s international role. In order to link universal human rights to the NPE concept, I then look at how the human rights dimension in EU-China relations is approached by both sides, and clarify the conditions of contestation on universal human rights in the case of China. *Section Three* develops a three-stage analytical framework which details the construction of EU normative principles, normative power in action and the way in which EU policy impact on China should be identified and judged normatively. It then details how this framework is applied in operational terms by specifying data requirements, analytical strategy and techniques.

2.1 European foreign policy and Normative Power Concept

In this section I first set the scene for ‘the constructivist turn’ (Hopf 1998; Checkel 1998) in the study of European foreign policy, which has provided the theoretical underpinnings to the study of NPE. I then demonstrate the usefulness and underlying problems of NPE as an analytical tool in an overview of the state of research.

1.1 Social constructivism in the study of European foreign policy

For social constructivists, not only identity and interest of actors are socially constructed, but also norms and principled ideas constitute an autonomous role in formulating state preferences (Wendt 1995; Ruggie 1998). Social constructivism, therefore, addresses the questions neglected by rationalists about issues such as the socialisation process of international norms, how interests are defined, thus underlines the constitutive impact of norms on the nature, empowerment and behaviour of state actors (Risse-Kappen 1994, Checkel 1998, Risse and Skikkink 1999, Klotz and Lynch 2007). Therefore, states pursuing human rights objectives in international relations is linked to their self-identity and value.

The contribution of a constructivist approach to European foreign policy studies thus has changed the research agenda by asking different sorts of questions about foreign policy (Bretherton and Vogler, 1999, 2006; Rosamond 2000; Checkel 2006; Christiansen, Jørgensen and Wiener 2001; Tonra and Christiansen 2004; Rumelili 2004; Manners and Whitman 2003). Although social constructivists in this sub-field do not form a single and coherent school, there is a shared emphasis on the interaction between agency and structure which are mutually constituted (Hay 1995, Rosamond 2000; Bretherton and Vogler 1999, 2006). While rationalists are keen in explaining choices and behaviour in terms of why certain decisions are made and actions taken, and their immediate consequences (Moravcsik 1993, 1997); constructivists are interested in understanding identity creation or a longer term model of norm compliance (Tonra and Christiansen 2004, 2011; Risse and Sikkink 1999). To that end, constructivist approaches have the merit of moving away from explanations of foreign policy merely based on absolute and relative gains characterised by materialistic considerations (Hill 1993, 1996; Stavridis and Hill 1996), and instead, to embrace beliefs, values, norms and ideas as significant explanatory variables of foreign policies (Risse-Kappen 1994, Checkel 1998). Therefore, it paves the way for new practices

of European identity construction which capture the complexity of the EU's international role in world politics (Ginsberg 1999, Bretherton and Vogler 1999, 2006; Elgström and Smith 2005, Whitman 1998, 2002; Zielonka 1998, 2008, Manners 2002, Manners and Whitman 2003), and better appreciate the importance of ideational objectives, such as the promotion of human rights, rule of law, good governance and democracy, which come to represent some major foreign policy objectives pursued by the EU and its member states (Lucarelli and Manners 2006, Smith 2001, 2005, 2008; Stavridis 2001). In this sense, the social constructivist paradigm is well placed to provide the theoretical basis for analysis that prioritises non-material power and focuses on the independent role that norms play in influencing EU foreign policy principle and action, as well as the practices of the third countries with which the EU interacts (Schimmelfennig and Sedelmeier 2002, Diez 2005; Youngs 2004).

1.2 The Normative Power Europe Approach

As it is widely acknowledged that there is something unique about the EU, opinions range from Europe as an (increasingly) irrelevant factor in international relations (Zakaria 2008; Kagan 2003, 2008), to the EU as one of the world's three main empires in the twenty-first century (Khanna 2008). In academic debates, a number of adjectives have been introduced to characterise Europe's global role and relevance. For instance, Europe or the EU has been envisaged as as a 'civilian power' (Whitman 1998, Maull 1999, Telò 2007), a 'soft power' (Nye 2002, 2005), a 'post-modern power' (Cooper 2000, 2003), a 'transformative' power (Leonard 2005), an 'ethical power' (Aggestam 2008) or a 'Market Power' (Damro 2011), all of which share the same origin - Dûchene's 'Civilian Power Europe' (1972) against Bull's 'Military Power Europe' camp. Manners (2002), whose work was theoretically enriched by constructivism in the study of European foreign policy, argues that both 'Civilian Power Europe' and 'Military Power Europe' reflect the rationalist bias for and insistence on materialistically driven policy actions and outcomes. For Manners (2002: 239), such debates were hindered by various academic attempts to measure how much a state Europe looks like. He thus proposes to locate EU foreign policy in the ontological attributes of the EU, arguing that the principles that guided the development and enlargement of the European project (peace, reconciliation, democratisation,

multilateralism, human rights, etc.) are the ‘constitutive’ features that make the EU a distinctive and unique polity as a ‘normative power’(Manners 2002: 252).

In current NPE literature, there is a distinction between descriptive, analytical and normative definitions of NPE. First of all, the descriptive account of NPE refers to the ideological dimension of the EU’s international identity which Manners defines as having ‘the ability to shape the conception of “normal” in international relations’ because of ‘what it is’ (Manners 2002: 237). For Manners (2002: 240), this aspect of NPE traces the origins of Europe’s normative difference in three aspects: (1) the historical context from which the EU was created; (2) a hybrid polity; (3) its political legal constitution. This unique combination produces a European international identity that is based on its constitutive norms embedded in EU treaties, declarations and policies, and ‘predisposes it (the EU) to act in a normative way in world politics’ (Manners 2002: 242).

For a normative definition of NPE as distinct from ‘ethical foreign policy’, Manners (2007: 118) defines being ‘normative’ as ‘being honest about why and how foreign policy is conducted’, and therefore ‘being honest about the advocacy for, and analysis of foreign policy’. To that end, ‘normative’ refers to what is regarded as ‘normal’ in world politics (Manners 2002: 32), which is being standardised by international law, hence objective. He then elaborates on this definition by suggesting that if the EU’s normative principles are indeed recognised by the UN system, they should be universal (Manners 2008:56).

An analytical dimension to the definition of NPE, on the other hand, is highlighted by Diez from a social constructive perspective that NPE “focuses on the independent power of norms to influence actors’ behaviour” (Diez 2005: 616). Compared to its predecessors, namely ‘civilian power’ (Dûchene 1972) and ‘military power’ (Bull 1982) which focus on rational interests underlying relational power or structural power, a normative power refers to a kind of power that sets standards in world politics with its influence exerted by norms themselves (Diez and Manners 2007: 175).

The concept of NPE has also received much critique for how it has been formulated and defined. For some, it is not clear how these descriptive, empirical and normative dimensions of NPE hang together with so much confusion (Aggestam 2009, Forsberg 2009;

Haukkala 2008, Sjursen 2006a). Others notice that value pluralism can make this interpretation of NPE potentially problematic when it comes to the purpose of the concept. Since all major international actors contribute to determining and shaping norms in international relations, a normative power should seek to strengthen not just international law but cosmopolitan law (Eriksen 2006, Sjursen 2006b). Manners therefore clarifies that ‘it was, and is, a statement of what is believed to be good about the EU; a statement which needed to be made in order to stimulate and reflect on what the EU *should* be (doing) in world politics’ (Manners, 2006b:168). Others suggest that NPE is a discursive construction rather than an objective fact (Diez 2005; Pace 2007). Furthermore, Diez and Manners (2007) add that ‘reflection and reflectivity’ are crucial to the legitimacy of a normative power.

Since first formulated in 2002, the notion of ‘normative power’ has raised substantial interests and debates among scholars engaged in wider discussions on the ‘nature’ of the EU, its relevance with norms, perceptions and ‘roles’ in international relations. Theoretically, the concept of NPE has been linked to a wider discussion in international relations (IR) about the role of norms (Finnemore and Sikkink 1998) and the ‘constructivist turn’ in IR theorising (Checkel 1998). Therefore, NPE is widely seen as a perspective that captures the EU’s uniqueness, and defines, directs and legitimises its international role (Diez 2005). Not only has it become a grand narrative that helps to explain the source of legitimacy of European foreign policy bestowed by this construction of external identity, it also opens up a normative question about how norms are diffused through a discursive form of power (Diez and Manners 2007). It also resonates with *Article 21(1)* of the *Lisbon Treaty* which states:⁴

‘the Union’s action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the

⁴ As an amendment to the Treaty on European Union. See also Article III-193(1) of the draft EU Constitution.

principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law’.

On the empirical front, the NPE concept has been widely applied to studies of the EU (Manners 2006:168): for example, environmental policy by Lightfoot and Burchell (2004a, 2004b, 2005); the EU and global governance by Lamy and Laïdi (2002); EU foreign policy by Sjursen(2006b); Euro-Mediterranean relations (Adler *et al*, 2006; Bicchi 2006); European Neighbourhood Policy (Haukkala 2008); Europe and its others (Diez 2004, 2005), EU values and principles (Lucarelli and Manners 2006); Pace (2007) and Harpaz (2007) on Middle East conflicts; and on normative foreign policy of EU and other global powers - Russia, India and China (Tocci 2008); Brummer (2009) on EU sanctions policy; and Wood (2009) on energy security. Although the EU’s power of attraction is clearly found on what it is seen to represent on an ideational level (Laïdi 2008b), most empirical studies simply refer to NPE without identifying norm diffusion mechanisms or the parameters with which we could measure the EU’s normative power. Moreover, despite some successful stories on the abolishment of the death penalty, EU enlargement, the International Criminal Court (ICC) and the Kyoto Protocol, most empirical studies tend to be quite pessimistic about the construction of NPE. Furthermore, current NPE literature needs more study of European policies beyond its regional focus on enlargement processes and neighbourhood policies. Especially in cases where the construction of NPE are fundamentally challenged, there seems to be an obvious need to deal with uncomfortable criticisms such as ‘Eurocentrism’ (Gerrits 2009: 2), ‘Eurocentric Imperialism’ (Sjursen 2006b: 242), or ‘European Messianism’ (Wang 2009) put forth by countries with no prospect of membership and different normative priorities in their world views.

NPE, notwithstanding its problematic theoretical formulation, has made a vital contribution in conceptualising the unique international role of the EU in normative aspects. It introduces a multi-dimensional understanding of power and effectiveness, and articulates how the EU influences the normative conceptions of the world by standing by the principles and values it was founded upon. In this thesis, this notion is adopted as an analytical tool for its strength in providing us an alternative way in understanding and judging such EU influence on China beyond a rationalist paradigm. By focusing on the ideational impact of EU norms as reflected in Chinese academic and official discourses,

the NPE analytical framework in this thesis will be uniquely modulated to highlight the level of norm contestation and misperceptions of both sides on issues under investigation.

2.2 China as a Case Study: Some Theoretical Clarifications

Before introducing the tripartite NPE framework, concerning the growing cynicisms from both within and outside Europe regarding the validity of NPE as an analytical tool (Gerrits 2009), it is important to introduce the Chinese perspective on NPE, and clarify the degree of contestation in interpreting human rights norms, thus provide normative basis for the subsequent case-studies. This section analyses the link between Chinese perceptions on the EU's international role and China's domestic human rights discourse. In so doing, I first look at potential theoretical challenges that a Chinese case poses to the construction of NPE, and the role of human rights in formulating EU-China relations. I then link universal human rights to the NPE concept, and clarify the condition of contestation on universal human rights in the case of China.

2.2.1 Chinese Perspective towards the EU's International Role

Many have noticed that, despite a growing body of literature and debate in the last decade centred on European foreign policy in normative terms, the EU's self-representation as NPE, both in academic literature and official discourse resonates with few outside of European academic circles. Some have concluded that NPE is not easily understood, recognised or appreciated by those outside of the EU, hence NPE is Eurocentric, self-obsessed and problematic (Mahbubani 2008, Gerrits 2009). Two recent publications on Chinese perceptions of NPE seem to have echoed this observation (Womack 2008, Wang 2009), in which both scholars tend to dichotomise the Chinese world view with the European one by picturing the Chinese culture as being radically at odds with that of the Europeans. While cultural and historical differences have played some part in shaping China's world view and response to those of the Europeans, these explanations are neither adequate nor representational in the Chinese study of 'the EU model as civilian power and normative power' (Zhu 2007: 151). This section concentrates on the view of Chinese academics on the international role of the EU and the perceived example it sets – the European model. I draw upon publications primarily between 2003 and 2009 by leading

Chinese scholars who had been actively involved in EU-China academic exchange.⁵

The EU's International Role

As with the official discourse, the Chinese EU analysts tend to share a common view that it is in the EU's interests to become an independent pole in world affairs (Shambaugh 2007, Men 2006). This has much to do with the dominance and persistence in using a realist approach to the study of international politics within the Chinese academic community. Many view the EU's role as an emerging pole of power so as to balance US hegemony (Wang 2004; Zhao and Fang 2004). Therefore, the EU integration and enlargement are considered as the EU's political ambition driven by a fundamental objective to seek a pole in a future multipolar world, despite the lack of hard power (Zhao and Fang 2004).

Although it is suggested that there is 'a remarkable homogeneity, uniformity, and conformity in Chinese perceptions of Europe and Sino-European relations' (Shambaugh 2007: 128), some nuanced or distinctive views can be identified. Chen (2005: 15) suggests that the reason for the lack of the balancing effects from other major powers such as the EU or Japan, is because they share common values and liberal identity with the U.S, which leads to the establishment of a 'common security community' between them. For Chen (2005: 16), this tendency has therefore limited China's chances of forging strategic partnerships with the EU to counter-balance the United States. Feng (2006) warns of an overly generalised ideas of what constitutes a 'pole', and argues that the EU's "soft power" and its global economic clout should been taken into consideration, however incomplete or unbalanced the 'pole' is (cited in Shambaugh 2007: 131). Moreover, many Chinese scholars recognise that the EU is a strong advocate and prime example of promoting multilateralism which resonates with China's Five Principles of Peaceful Coexistence (Song 2007; Dai 2007; Zhu 2007; Crossick and Reuter 2007: 209).

In exploring the EU as an emerging power in world politics, there has been a shift of paradigm towards 'a constructivist turn' in Chinese academia since 2001 (Zhu 2007: 151). Regarding the notion of NPE, there have been very few written works by Chinese scholars. Wang's account (2009) indicates a formidable discrepancy between Chinese and European

⁵ In 2003, China published its first EU policy paper.

understanding of this role concept. The so-called historical-cultural perspective applied to the ‘Chinese perception’ of the NPE is in fact a realist/positivist understanding of power (in decline) and post-modernist/colonialist interpretation of ‘Europe’ in which universal norms such as human rights was undermined by cultural relativism. On the other hand, Song (2010a) notices that ‘many Chinese prefer the EU to be a social power; a social power means that the EU provides different kinds of models for international politics, as well as political and social development for others.’

In Chinese academic discussion, the notion of NPE seems too readily associated with ‘European superiority and centralism’ (Wang 2009: 70), but not much academic research has been done in terms of verifying its theoretical and empirical relevance from a Chinese if not Chinese official perspective. However, a younger generation of Chinese scholars have recently started to move beyond a descriptive account of NPE towards more original thinking with regard to the EU’s international role and global governance (Jian 2009, Wang and Rosenau 2009).

By contrast, there has been a substantial amount of scholarly attention already devoted to the study of the EU as various models for China’s domestic reform and foreign policy. If the link between certain European models and human rights issues can be established in the case-studies, China’s willingness to learn from European models would sit well with an NPE perspective, in particularly ‘the power of example’.

The European Model

The so-called “European model”, a framework in which Europe/EU are taken as political, economic and social models that inspire the Chinese leadership in dealing with its economic and political reform, is much discussed among Chinese scholars who are engaged in European studies.

There is considerable amount of appreciation for various European social welfare, integration, development, and even political models in China, although usually their emulation would not be openly admitted by the Chinese authorities (Song 2010b: 775). For instance, after Deng Xiaoping’s “Socialism and Chinese Characteristics” in the late 1980s and early 1990s, Jiang Zemin put forward the so-called “Three Represents” in the late

1990s, and Hu Jintao came up with “Promoting the Ruling Capacity of the Communist Party” through “Scientific Outlook on Development” in order to promote “Harmonious Society”⁶. These slogans and strategies were arguably drawn from the Chinese government funded research projects on the European social democratic parties, which were taken as an example for the CCP to better position itself in the Chinese society (Song 2007; Chen and Zhong 2005).

Moreover, the EU as an integration model which can be applicable to settle the Taiwan question has been discussed among Chinese academic community and think-tanks, even though the Chinese officials do not openly recognise the EU model as an example to follow. (Song 2007: 178). With a strong resemblance to the “one country, two systems” proposal by China to settle cross-strait relations with Taiwan, the EU model is believed to be potentially attractive to China (Blankert 2007: 90-92).

Finally, Chinese academic studies have paid special attention to the ‘Nordic model’ of social welfare since the 1980s when China was facing various social problems alongside its economic reforms (Huang 1987). In particular the ‘Swedish model’, not only for its welfare system but the socialist democracy – has been considered by many as the role model for China to follow in decades to come (Song 2007; Zhang 1994).

2.2.2 The Human Rights Dimension of EU-China Relations

In defence of a normative perspective on European human rights foreign policy towards China, this section presents a general picture of how both sides have studied the human rights dimension of EU-China relations. Holslag (2006: 558), for instance, concludes from a neo-liberal perspective that the means of low politics does not necessarily steer China’s transformation in a way that is suitable to Europe’s own interest. He believes that it is the form of asymmetric interdependence in which Europe takes a dominant position to give itself the economic leverage and moral high ground. For Holslag, China’s compliance with the Western standards of human rights, good governance, rule of law and a strong civil society is adaptive; hence it has not been a question of choice, but a question of necessity. From an institutionalist perspective, Algieri (2002) argues that political issues, such as the

⁶ Political reform in China often means changes in the CCP governing theory. Therefore, each time leadership changes, new phrases will be added to the official discourse.

events at Tiananmen Square have not been an irritant in the EU-China economic relations in the long run. For Algieri (2002), the EU prioritises the strategic and economic relations with China without abandoning the attempt to press on China to accept Western ideology. Although the EU has pragmatically chosen a dialogue approach on human rights issues over a confrontational one in such a way to gain China's cooperation since the late 1990s, the initial idea of instrumentally using human rights issues to transform China is still very present (Algieri 2002: 69).

Despite the validity of these perspectives in explaining choices and behaviour in terms of why decisions are made and actions taken, they are often too rigid in excluding of non-material dimensions and disregarding the importance of norms and identity in defining state interests. However, when norms and identity do receive scholarly attention, it risks implicitly flirting with cultural or moral relativism. For instance, Shambaugh (2007) highlights the strong sensitivity among the Chinese official elites towards Western attitudes, and calls for more scholarly attention on Chinese academic studies by European scholars to reflect upon Chinese views on 'Westernising China' and 'Western cultural superiority' which are often associated with the European promotion of human rights. Golden's (2006) socio-cultural perspective extends this remark further by arguing that anything associated with Western Enlightenment values is likely to be met with understandable resistance because of the Chinese perception of its colonial past and moral order.

Due to the political sensitivity of this subject matter, Chinese scholarship on human rights has rarely challenged the official discourse since 1989. Today, there are still significant boundaries on what can be said or published. Chan (1999: xii) notices that 'the official views inevitably seep through academic writing'. Hence it is difficult to map out how Chinese intellectual elites genuinely perceive European criticisms of China's violation of international human rights. In official and semi-official scholarly discussions, some see the European concerns on human rights as an aspiration to "Westernise China via "peaceful evolution" (Wang 1997: 13, Zhao 2000: 12), or 'Europeans have a historically formed sense of superiority, an attribute of the [concept of] European centralism' (Mei 2006: 24, cited in Shambaugh 2007: 136). Others suggest (Huo 2005: 13; Dai 2005: 80) that the EU presents itself as a 'saviour' or 'teacher' whose culture, value system and social institutions should be the future direction for China to follow.

In this thesis, I consider that a universalist view on human rights should not be jeopardised by cultural or historical consideration. In fact, sometimes the source of antagonism from post-colonial countries like China has not been the substance of universal arguments, but rather who advances them (Donnelly 2007: 306).

2.2.3 Universality of Human Rights

The claim of universality has been considered as the fundamental basis of NPE construction (Tocci 2008, Gerrits 2009), even though liberal universalism is now increasingly challenged from both outside and inside the liberal world (Richmond 2006: 292). In this thesis, my objective position on universal human rights is to a minimum extent. Universalists such as Donnelly and Henkin represent the mainstream human rights position in the West which is sceptical about collective rights advocated by countries like China (Donnelly 1989, 2007; Edward, Henkin and Nathan 1986). In a cross-cultural context, however, it is Parekh's position of minimum universalism that has a wider appeal. He argues that there are certain 'universal constants' such as human dignity, worth, equality and fundamental interest which 'generate appropriate universal values' (Parekh 1999:128). To translate this position into normative standpoint of NPE, I suggest that, as long as the human rights norm under concern are institutionalised at the highest level of international law, such as UDHR, NPE should be spared of being accused of an expression of Eurocentric or cultural imperialism.

One of the central premises of normative power is that other actors should wish to emulate the EU 'for norms and the Union stands for and the example it sets' (Aggestam 2009: 29). Thus, for successful promotion of human rights, the EU's normative power is crucially dependent upon the way in which China perceives the legitimacy of the EU's actions.

China is often considered as the main advocate of Asian values and cultural relativism, and China has long engaged in adaptive learning to parry the West's trust (Wan 2001). Kent (1999) concludes that the difficulty in implementing human rights norms in China lies in its rigid political culture and unsuitable system of law. Nathan (1994: 643) adds that human rights are likely to remain a structural weakness in China as long as the country remains outside the trend of democratisation. After carefully analysing how Chinese intellectuals have discussed the human rights concept since early twentieth century, Svensson (2002)

confirms the universality of human rights by analysing the Chinese original thinking on the concept of human rights since the early twentieth century. A cultural anthropologist and sinologist by background, she suggests that any reference to “Chinese culture” or “Asian values” would be best avoided when it comes to human rights, due to the heterogeneous and changing nature of national identity and culture (Svensson 2002: 9).

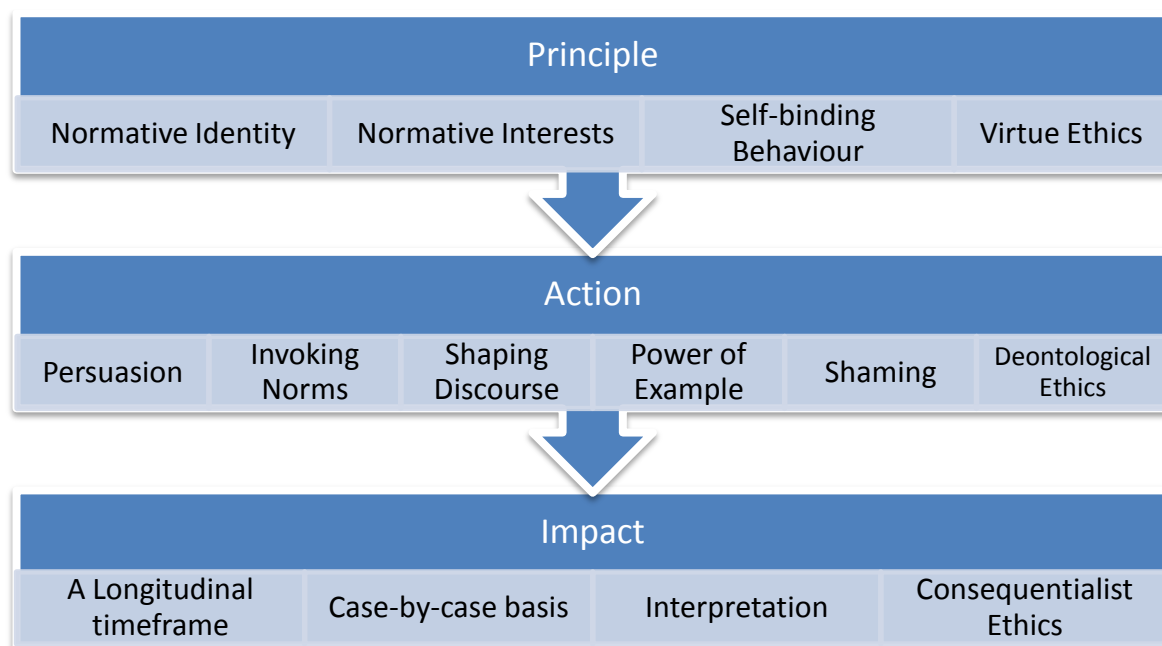
In order to specify the definition of normativity in the following case-studies, I begin the framework of analysis by examining the different normative interpretations between the EU and China, and then a definition based on the highest level of international law is chosen to form the basis of normative criteria. Although the UN framework provides legitimacy to certain universal values, the implementation and specific interpretation of meaning is rendered differently in Chinese official discourses. Moreover, it is worthwhile noticing that, universality of human rights has not only been challenged by Chinese authorities, but also European themselves, who can be motivated by a respect for the other culture. While avoiding an extreme cultural relativistic approach, I intend to highlight any perceived imperialistic or Eurocentric endeavour which should lead to greater self-reflexivity and sensitivity for the Chinese historical, legal and cultural traditions.

2.3 Establishing the NPE Framework: From Theoretical to Empirical Analysis

The proposed framework aims to establish a systematic linkage between the NPE concept and the EU’s normative agenda towards China on human rights. It detects and evaluates the normative tendency in EU human rights policies through three variables, namely, normative principle, normative means of power, normative ends. These three variables feed into a three-stage framework drawn from Manners’ tripartite analytical approach which was designed to compare and contrast what the EU ‘is’; what the EU ‘says’ and ‘does’; and its ideational impact (Manners 2002: 252; 2006b: 69-81; 2008:67). This interpretive method facilitates the study of rhetoric, perception, discourse and identity in EU external actions. Instead of trying to set up objective standards to measure policy principles, actions and impacts, an interpretive approach to NPE aims to understand various phenomena with content and meanings (Alvesson and Sköldberg 2000: 136, in Manners 2009a: 19), and evaluate them normatively.

As illustrated in Figure 1.1, the tripartite theoretical framework is combined with normative ethics in each stage of analysis in order to understand and judge the EU's normative power.

Figure 1.1:



2.3.1 Construction of Principle

The theoretical framework starts by examining the constitutive principles of the EU. It asks how these principles become externalised as aims and objectives in the EU's foreign policy; and how we might evaluate them through virtue ethics.

2.3.1.1 Normative Identity

Manners' (2002: 240) first and foremost claim about NPE is its normative identity. According to Manners, the normative identity of the EU derives from its historical experience, hybrid nature of its polity and its treaty-based legal order, which make the EU stand out from the rest of the Westphalian world. Therefore, the idea that EU normative differences are good is because the initial design of European integration is directed towards 'pooling their resources to preserve and strengthen peace and liberty' (Preamble to the Treaty establishing the European Communities: TEC).

This normative identity has propelled the EU to place universal norms and principles at the centre of its internal and external policy dimension (Manners 2002: 241). Regarding human rights, the EU makes its legal basis closer to *the European convention on human rights and fundamental freedoms* (ECHR) and UDHR than most other actors in world politics (Balfour 2008). The EU member states ascribed to *the International Bill of Human Rights* including the UDHR, the ICESCR and the ICCPR as the legal justification for its external human rights policy, whereas the US ratified the ICCPR in 1994, fifteen years after signing it, but it has never ratified the ICESCR. The EU's normative difference from the US has therefore ensured it possess a comparative advantage over the US in pressuring China to abide by international human rights laws.

2.3.1.2 Normative Interest

Social constructivists see identities and interests of actors as socially constructed, and highlight the independent role of norms and identities in the formation of state preferences (Wendt 1995, Risse and Sikkink 1999). Therefore, states pursue human rights goals abroad for reasons to do with their identity and status. Manners (2002: 251) suggests that the EU's refusal to extradite suspects of terrorism to the US comes to represent an example of the EU having normative interests instead of instrumental ones. In this case, one could argue that a normative identity for the EU lays the basis for normative interests. The empirical study conducted by Tocci (2008) also suggests that EU normative interests do exist, but are not always a dominant force in the EU's action.

When it comes to the EU's 'constructive' engagement with China, the rationale adopted by the European Commission is that economic cooperation with China should bring political changes. In this case, it is worthwhile asking whether EU normative interests are necessarily at odds with its economic interests, or how can the EU be normative, at the same time, having selfish interests? For, Forsberg (2009: 12), interests, strictly speaking, simply cannot be normative. In discussing whether we should exclude the interested-based dimension from the discussion on normative power, Aggestam (2009: 33) highlights the difficulty in distinguishing between 'interests' and 'norms', and yet, this distinction is crucial for normative justification of a particular action. However, on the empirical ground, the uneasy coexistence between norms and interests is inevitable and will become more

obvious as we see ‘the decline of the West’. In discussing the EU’s role in promoting the UDHR, Balfour (2008: 3) notices that, promoting human rights can be extremely complex in practice, not only the others tend to see the UDHR just a reflection of Western views ‘used to dress up the imposition of “values” onto different societies’, but also ‘a mask’ to hide its selfish interests.

In the EU’s relations with China, there had been an ideological dimension being put alongside trade and economic development, due to the assumption that increased contacts with European partners should lead to liberalisation of the Chinese economy and eventually the political system. However, in reality, this much anticipated ‘spill-over’ effect has yet to occur, and economic and strategic objectives often override human rights concerns (Patten 2002, in Panebianco 2006: 139).

2.3.1.3 Self-binding Behaviour

Diez (2005: 636) suggests that the EU’s ‘formal commitment to international law’ is a classic example of such self-binding behaviour to international norms, which comes to represent one of the distinctive features of ‘being normative’. According to Sjursen (2006b: 244), self-binding indicates that the EU makes itself normative through an emphasis on international law and multilateralism. For Manners (2007:119), self-binding refers to ratifying the highest level of international law or cosmopolitan law.

On the issue of human rights, the EU has developed a widely recognised normative identity by subscribing to the UDHR’s principles. However, it still has loopholes that China can exploit to develop counter-arguments towards EU criticisms. For instance, Chinese representatives at the EU-China human rights dialogue have frequently raised the issue of asylum-seekers and refugees, when facing criticisms on its own violations of ethnic minorities’ rights.⁷

⁷See the Press Release by the Council, Press: 134, Nr: 9995/09, following the 27th round of EU-China Dialogue on Human Rights in Prague on 14 May 2009. Summaries of the 24th and 28th rounds of human rights dialogue (17/10/2007 and 24/11/2009) which also mentioned China’s counter-arguments are available on the respective Presidency countries’ websites at
http://www.eu2007.pt/UE/vEN/Noticias_Documentos/20071017UEChina.htm and
http://www.se2009.eu/en/meeting_2009/11/24/eu-china_dialogue_on_human_rights

The area of human rights has been traditionally studied from legal and institutional perspectives. In a positivist approach, incoherence suggests ‘unilateralism and double standards’, therefore, it is a matter of legal credibility, which requires the external human rights policy to be practised the same way internally (Alston and Weiler, 1998: 8-9). In view of virtue ethics, the EU should be ‘living by virtuous example’ (Coombes, 1998, in Manners 2008: 56). To that end, the EU’s policy coherence and consistency are put down as an ethical matter.

2.3.2 Normative Action

What is important about of NPE is not just the universal nature of the norms being promoted, but also the means through which they are diffused. This type of norms diffusion in the absence of physical force is set to derive from the EU ‘being reasonable’, a notion which invokes the Kantian enquiry underlying deontological ethics (O’Neil 2000, in Manners 2008: 57) Thereby, the second stage of analysis looks at how the EU promotes its own principles. It looks at the process of normative power at work and what is the nature or character of normative actions.

The putative existence of the EU as a ‘normative power’ often creates adaptation problems in translating normative actions into policy language. What constitutes normative action and non-normative action? What conditions foster and retract the diffusion of European ideas? How do the different diffusion mechanisms interact? In circumstances where European ideas meet with contestation and resistance, how do we measure the effectiveness of ‘soft’ normative mechanisms, such as persuasion, invoking norms and shaming? With these questions in mind, I draw from Manners (2002, 2009a) and Forsberg (2009), and illustrate how five types of norm diffusions mechanisms - namely, persuasion and argumentation; invoking norms; shaping the discourse; showing example; conferral of prestige or shame – can be applied to the Chinese case.

2.3.2.1 Nature of Normative Actions

Deontological ethics suggests that the EU should focus on the rationalisation of responsibilities and rules in its external actions (Manners 2008: 57). According to deontological ethicists, public debates and reasoning are the means to identify common good and create the interest groups. In the practice of foreign policy, the making of

domestic and international law is believed to be the key to identify such common good (O'Neil 2000: 52, cited in Manners 2008: 57). Speaking of normative action, Manners suggests that 'being reasonable' ensures that the EU acts normatively through a process of engagement and dialogue.

2.3.2.2 Persuasion and Argumentation

Normative power is most readily associated with persuasion as opposed to the use of 'illegitimate force to shape world politics' (Manners 2002: 244). Persuasion, as suggested by Forsberg (2009: 16), requires the abilities to bring eloquent rhetoric, personal or collective appeal and the relevant knowledge and expertise into play. For Manners (2009a: 12), persuasion by NPE refers to constructive engagement, institutionalisation of relations, and multi- and pluri-lateral dialogue between participants.

The EU's promotion of human rights relies on a twice-annually dialogue with China established in 1995, to replace the previous confrontational approach which held China responsible at the UN Commission on Human Rights (UNCHR) through co-sponsoring a resolution with the U.S (Baker 2002). The human rights dialogue allows both sides to exchange views on a broad range of issues in an exclusive environment. The key issues discussed over the years have been those concerning China's cooperation with UN mechanisms, the death penalty, ethnic minorities' rights, freedom of expression, and individual cases. By using a dialogue approach, some believe it is a more discreet solution that the Chinese appear more receptive to, and arguably more likely to produce results, such as legal judicial reform on the death penalty in 2003 (Schabas 2009: 10). In addition to the dialogue sessions, the EU raises its concerns on human rights with China in bilateral summits, ministerial and experts' meetings. The EU's comprehensive engagement strategy with China is thus based upon persuasion rather than relying upon the imposition (or threat) of sanctions by the US especially during the Clinton administration (Panebianco 2006: 140). A different approach between the US and the EU has also emerged concerning China's entry into the World Trade Organisation (WTO). For many years, the US applied conditionality to the Chinese application, while the Europeans preferred to integrate China in the multilateral institutions and influence China from within.

However, this shift in the EU's human rights approach bears several important questions in empirical investigation regarding the rationale of these presumably more normative means. First of all, when coercive means are available to influence China, relying on soft measures such as persuasion might indicate hypocrisy or the mere result of political weakness, economic interdependence, and/or strategic considerations rather than of one's own virtue (Tocci 2008: 9). K.E. Smith (2003: 205) notices that poor, marginal African states tend to be subjected to double-standards, such as being imposed negative conditionality more easily than strategic countries, even if they have similar human rights records. Furthermore, the extent to which the European Union itself may have changed through its interaction and dialogue with China is another salient question. Particularly through the dialogue approach and cooperation programmes, there is a possibility that the EU's rhetoric on human rights issues in China is being shaped by the Chinese official views.

2.3.2.3 Invoking Norms

Another mechanism typically associated with NPE is invoking norms, or activation of commitments, which refers to agreements third powers have committed themselves to (Forsberg 2009: 17). In the context of EU promotion of human rights, this mechanism corresponds to the use of *démarches*, resolutions, declarations in which China's international legal obligations would be invoked in a responsive manner when violations on human right in China are brought to the EU's attention. For successful norm diffusion through invoking norms, not only China has to subscribe itself to certain legal commitments, the EU needs to be clear and consistent as to which international legal norms should apply in certain issue areas and individual cases. Furthermore, a range of cooperation programs including an EU-China working group designed to push China towards full ratification and implementation of the ICCPR and the ICESCR. The EU's ability to monitor, and implement these programs should be an important barometer of the normative power of the EU.

2.3.2.4 Shaping Discourses

According to Manners (2002: 239), normative power refers to the ability to shape discourses. In Manners' list of diffusion mechanisms, this type of normative power is closely associated with 'cultural filter', which refers to, according to Kinnvall (1995:61-67, quoted in Manners 2002: 245), learning, adaptation or rejection of given norms as a result

of international norms and political learning by third countries. An example of this mechanism in the case of China on human rights can be found in discursive changes in Chinese official rhetoric, scholarly debates on the death penalty, which is believed to have led to a reportedly dramatic decline in the practice of the death penalty over the last ten years (HRIC and FIDH, 2004; Schabas 2009: 9). Although one cannot be certain how much credit we should give to the EU-China dialogue, legal seminars, training/visiting programmes of Chinese lawyers, judges, academics, and civil servants, one certainty remains that this progress – however modest it might be – is not the result of the US' normative power.

2.3.2.5 Power of Example

For Manners (2002: 247), the essence of NPE is not what the EU does or says, but 'what it is', by which he indicates that normative power is the power of attraction through which the EU simply stands as a model for others to follow. Hence, 'power of Example' is considered by some as the most normative form of power (Manners 2002, Zielonka 2008, Forsberg 2009). However, Forsberg (2009: 18) argues that the EU's attraction could be its economic power, too; whereas 'power of example' should convey a positive sense of learning. In the EU-China context, economic interdependence and the EU being an example are closely interrelated as neo-liberalists would assume that interdependence will automatically make China a responsible international stakeholder (Dent 1997; Dai 2007). This thesis, however, would primarily focus the non-materialistic dimension of this diffusion mechanism, for instance, the Chinese desire to adopt various aspects of their perceptions of the 'European model' that may be of use to China's own reform process.

2.3.2.6 Conferral of Prestige or Shaming

According to Manners (2009a: 12), the attribution of prestige involves public declarations of support to membership of an international community, while the attribution of shame involves public condemnation or the use of symbolic sanctioning. For Foot (2001: 9), shaming is an important form of norm diffusion mechanism because it is bound up with state identity, the idea of belonging to a normative community of states, civilised behaviour, or being an insider versus an outsider. For Risse and Sikkink (1999: 26), states often resent and sometimes are sufficiently disturbed by their own international image that they would start to make human rights concessions. In the Chinese context, raising China's human

rights problems at international fora and publicising the Tibetan cause are cases in which China is subject to the normative process of shaming. In the absence of direct material cost, shaming would be an effective tool if China is seriously concerned about its reputation and recognises the validity of international human rights norms (Foot 2001:10; Risse and Sikkink 1999: 25). However, invoking a sense of shame on China's behalf could lead to anti-Western demonstrations among Chinese nationalists and diplomatic defiance in the Tibetan case.⁸ In China's WTO entry negotiations, the EU had positively encouraged China and supported its integration with the international institution, following the rationale of controlling China from inside (Panebianco 2006: 140). Whereas, The EU's arms embargo on China has been widely considered as a symbolic sanction, which for Chinese official and academics is a matter of political discrimination as it puts China alongside Zimbabwe, Sudan and Myanmar (Anthony 2005; Lindsey 2005; Willis 2009). Despite a few member states' attempt to lift the ban in 2003, proponents of the decision cited that national export regulations were already strict enough, and China has become a different country since 1989, whereas opponents insisted on retaining the embargo as China's political repression shows little sign of decreasing (Lorenz 2004).

2.3.3 *Impact*

The final stage of analysis considers the normative impact of the EU's actions. Manners (2009:18) suggests that a normative power approach would evaluate results differently from rationalist/positivist approaches, which 'seek objectivity in the subjective social world'. In this thesis, the gaps between EU policy action/inaction and China's socialisation need to be identified before arriving at any understanding of how the EU shapes the definition of normality through the attraction and acceptance by the Chinese. The process of socialisation, as defined by (Risse and Sikkink 1999:5), refers to the process in which international norms are internalised and implemented domestically. In the Chinese context, this process can be reflected in human rights dialogues, and cooperation programmes designed to strengthen the rule of law and to promote civil, political, economic and social rights as part of the EU's constructive engagement with China since the mid-1990s.

⁸ 'A time for muscle-flexing: as Western economies flounder, China sees a chance to assert itself-carefully', *The Economist*, 19 March 2009

However, given the lack of transparency in EU-China dialogue, alongside the difficulties in projecting an evaluating effective socialisation towards a strong regime with weak civil society (Peerenboom 2002: 191), we face several methodological problems. First of all, how can the effects of external pressure be distinguished from Chinese domestic pressure? Secondly, without precise causal links accounting for China's norm compliance, it seems unlikely to isolate the EU's normative impact from that of other norm entrepreneurs, such as the UN and the U.S. To address these problems, I take an issue-specific approach to look at how certain EU policies influence China's rhetoric and behaviour. For instance, on the issue of the death penalty, the EU has clearly taken a distinctive moral authority and embarked on a global abolitionist campaign, therefore, the EU is more likely to be the major driving force than any other international actor in shaping China's domestic discourse. Whereas on other issues in which China has not change its fundamental approach, I ask to what extent the EU has contributed to the international visibility of China's human rights violations, and to what extent the Chinese perceptions on Western imperialism, sovereignty, its economic imperatives or the need for internal stability have weakened or undermined the impact of NPE.

Additionally, to judge the impact of the EU's policy action, consequentialist ethics, drawn from the utilitarianism of Bentham and Mill's 'greatest-happiness principles', suggests that the right consequences should be evaluated not on merits of those who deliver the action, but on the general rules or principles found in the target society (Manners 2008: 58). Straightforward as it is, this path for judging NPE might call the EU's human rights principles into question because of value pluralism. Kent (1999:14) suggests that one right consequence in China, should be an active and transparent engagement with human rights dialogues which are open not only to political and scholarly elites, but independent scholars, lawyers, NGOs and representatives of civil society. Foot (2001:11) adds that normative results in China begin with a transformation of Chinese official discourse on human rights, and China's gradual involvement with international human rights regimes, domestic reforms and a growing civil society.

2.3.4 Application of the Tripartite Approach

After establishing the internal validity of the NPE approach, the next step is to apply this framework of analysis to the selected cases, each of which is operationalised in three analytical procedures in order to guide the data collection and empirical investigation.

2.3.4.1 Specification of Data Collection

In this thesis, it is the operationalisation of NPE which determines data requirements and therefore leads to alternative interpretations. These data requirements are determined by standardised research questions addressed in the tripartite framework and key concepts embedded in the NPE hypotheses across three stages of analysis, such as constitutive principles, persuasion, norm-invoking, self-binding shaming, or local ownership.

The first stage of analysis begins by looking at which principles provide guidance in framing the EU's foreign policy. This involves empirically describing what principles are being promoted and then normatively judging these principles through virtue ethics (Manners 2008, 2009a: 18). In operational terms, I examine the EU's founding legal documents and treaties. Additionally, I look for commitments to universal human rights and value-based arguments in EU Guidelines on human rights, the Council's statements, declarations, conclusions, foreign policy speeches within each case-study between 1989 and 2009.

The second stage looks at the way in which human rights principles are translated into actions. From an NPE perspective, I aim to identify the non-coercive nature of policy actions with elements of persuasion, argumentation, conferral of shame or prestige, provoking norms and shaping discourses. I therefore analyse empirical resources based on the Council's 28 press releases on EU-China human rights dialogues (1995-2009), declarations, the Commission's Communications on China; the Parliament's public hearings, debates, resolutions and archives. In order to identify mechanisms of norm diffusion, I look at EU missions and operations detailed in the EU's China strategy papers, and archival records (1989-2009) of the activities by the EU's Delegation in China. Specifically, I seek relevant cooperation programmes funded by the Commission which have been directly and indirectly designed to address issues of the death penalty and the Tibet question.

The final stage of analysis examines the normative impact of the EU's action/inaction. In so doing, I identify four different sources of data to analyse normative impact in the Chinese context. First of all, I ask whether China has become increasingly involved in an active and transparent engagement with EU-China human rights dialogue. Increasing involvement by the Chinese means allowing independent scholars, lawyers, and NGOs to participate in the human rights dialogue, Chinese official co-ordination and budgetary contribution in co-sponsoring EU initiated programmes. Thus, data can be found in the Council's press releases on EU-China human rights dialogue, the Council's Annual Reports on Human Rights and documentation on the Commission's missions and operations in China. Secondly, China's prospect of fully ratifying the ICCPR is another benchmark for norm compliance. Therefore, I look at working papers and archive files from the Commission-funded EU-China Human Rights Networks which aims at assisting China on reforms towards the ratification of the ICCPR. Thirdly, since normative impact is most readily associated with the changing perception of normality, I seek to identify change in rhetorical construction of Chinese perception or misperception towards the EU's international role, in particular the way in which two cases are discussed against the backdrop of EU-China relations. Relevant data can be found in foreign policy statements issued by the Chinese Foreign Ministry, transcripts of Chinese Foreign Ministry's Press Conferences, official news media reporting, as well as academic publications by leading Chinese scholars from elite institutions which are considered as the closest possible to the Chinese foreign policy-making (Leonard 2008; Shambaugh *et al* 2007).

2.3.4.2 Analytical Strategy

Upon establishing two databases for the sub-cases, the evaluation of NPE hypotheses is about examining each case across three stages of the tripartite framework to see if the EU principle, action and impact are as the NPE approach predicts. For Manners (2009a:19), all three stages of the framework should shape and feed into each other. Therefore, at each stage of analysis within individual cases, I compare the claims of normative principles, actions and impact against one another, ensuring that the tripartite approach itself is internally valid and replicated across cases. Finally, the empirical evidence of both case-study chapters and their analytical conclusions are the focus of analysis in the final chapter. The justification of case selection in the previous chapter has demonstrated that each of these cases address certain variables of the NPE framework in a complementary manner,

synthesising these comparable findings would ensure the undertaken research method is robust, comparing to a single case-study or multiple randomly sampled cases (Yin 2009: 156).

Chapter Three

Human Rights and EU-China Relations: 1989-2009

Introduction

This chapter provides the historical background for the analysis of EU normative power in the case of China in the field of human rights. It aims to set the scene for the following case-studies as well as to illustrate how China and its EU partners interact with each other, regarding what is arguably the ‘thorniest’ issue in contemporary EU-China relations. This chapter does not directly assess the extent to which the EU is a normative power in the Chinese case. Instead, the rationale is to explore what the EU has actually done and how China has responded. On the European side, I analyse the arguments provided by EU actors in support of their external policy action. The findings shall later feed back into the larger debate about what sort of international actor the EU is, and the extent to which the notion of NPE captures the EU’s international role. On the Chinese side, I use both primary and secondary data which shed light on how the EU and human rights are perceived in Chinese official discourse.

This chapter covers the breadth and scope of the development of EU-China human rights diplomacy. Thereby, it combines a review of the evolution of the EU as an international actor in normative field and the rise of China, with a narrative of the role of human rights in shaping EU-China relations from 1989 to 2009. *Section Two* seeks to highlight the change in policy discourses, policy instruments, and interaction of the main forces at work in EU-China relations. To that end, the year of 1989 and 1997/8, which define historical phases in this narrative, is determined by the ways in which the EC/EU approached human rights issues in China. *Section Three* explores the Chinese perceptions of the EU’s emerging international role and the changing human rights rhetoric and practices in China.

It aims to link contemporary Chinese discourse on the EU to the role of human rights in Chinese foreign policy in the eyes of Chinese political elites. *Section Four* first asks whether human rights norms have a growing impact on European foreign policy towards China. Then, I proceed to analyse the ways in which an emphasis on negotiation, persuasion, knowledge-partnership and intellectual exchange have influenced human rights discussions between the EU and China. To that end, this section opens up the discussion on the extent to which the EU's China foreign policy can be understood as a normative power.

3.1 The evolution of EU-China relations in the field of human rights

This section asks two sets of questions: 1) how does the EU pursue human rights as its foreign policy objectives towards China? What rhetoric, instruments and methods are adopted? 2) Why has the EU adopted a non-coercive and comprehensive engagement approach in its human rights policy towards China? Is this the product of internal dynamics – related with its identity and value-based foreign policy? Or, are they influenced by China's growing economic influence and diplomatic tactics?

To present this historical narrative, I choose not to focus on the institutional arrangements of the CFSP and the role of main actors as the centre of the discussion. Instead, I approach the development of this human rights dimension through identifying patterns of evolution and dynamics in policy rhetoric and action through a chronological narrative. Along these lines, it paves the way for subsequent analysis on whether NPE fits these policy instruments and methods.

The timeframe of the narrative for this section is broadly defined by the change of nature in policy instruments and methods adopted by the EC/EU towards China in the 1990s. Although this watershed rests upon the year 1997, the actual EU policy shift towards dialogue and engagement was initiated as early as 1995. However, given the setbacks during the early stage of the EU-China dialogue (1995-1997) and the abandonment of the Common Policy towards the UNCHR in 1996, the year 1997 represents a relatively fresh start in which the position of the EU can be more clearly delineated.

3.1.1 Phase one: from principle to pragmatism 1989-1997

The European Community (EC) and the People's Republic of China (PRC) established formal diplomatic relations in 1975. At the time, China had just entered into an anti-Soviet partnership with the United States in 1971-2 followed by Sino-Soviet split in the mid-1960s, whilst the original six members of the EC - Germany, France, Italy, the Netherlands, Belgium and Luxembourg - had launched the European Political Cooperation (EPC) process in 1970 as the forebear for the future Common Foreign and Security Policy (CFSP). By and large, the way in which EU-China relations developed has been characterised by its geographical distance, primacy of trade and misperceptions from both sides (Shambaugh 1996, 2007; Stumbaum 2007).

Throughout the 1970s and 1980s, the relationship between Western Europe and China has been widely seen as derivative of broader relations with the two superpowers, in which human rights was largely a non-issue (Yahuda 1995, Wan 2001). The reasons for Western Europe's neglect of the human rights situation in China are primarily two-fold. Firstly, the promotion of respect for human rights in third countries was not an explicit objective on the EPC's agenda until the late 1990s. Up until 4th June 1989, only four documents issued by the European Parliament had referred to China and human rights, none of these texts were publicly released at the time (Wan 2001: 67). Secondly, the EC exempted China from human rights criticism because China was considered as a strategic check on the Soviet Union. Thus, a better relationship with China served as leverage against Moscow (Cohen 1987: 474-488, Yahuda 1995).

On the Chinese side, human rights were not considered as an issue with Europeans at this stage; therefore, China did not take any diplomatic action to defend its human rights record. As Nathan (1994: 624-628) notices, China often defended itself by attacking Western Europe for its colonial past prior to 1989. Although the term 'human rights' was rarely mentioned, China resorted to norms such as self-determination, racial equality, and justice to facilitate its propaganda both at home and abroad with the third world countries (Wan 2001: 68).

3.1.1.1 Tiananmen 1989: the darker days in the past

After the rapprochement in the 1980s, the steadily improving EC-China relations seriously deteriorated as a result of the 1989 Tiananmen Crackdown which still haunts China's relations with the West to this day.

In late May 1989, the EP adopted a resolution urging the Chinese authorities to engage in a dialogue with student representatives amid the ongoing protests.⁹ While deploring '*the brutal repression of the people of Beijing*', the EC Commission issued a strong statement on 5 June 1989, in which it warned of the EC-China relations:

*"being permanently affected if the policy of the Chinese government were to start on a course which would put at risk the policy of openness and reform followed until now".*¹⁰

On 6 June 1989, the Twelve condemned the crackdown, and suspended all high-level contacts with the PRC.¹¹ However, while recalling the drafting of this statement during the Parliament question time with regard to which tone of language and measures to be taken against the PRC, Mme. Cresson, the then President-in-Office of the Foreign Ministers believed that the twelve member states '*were not on exactly the same wavelength*'.¹²

On 27 June 1989, according to the Council's statement, an arms embargo was to be imposed on the PRC by member states, co-operation projects were to be reduced including those in the areas of culture, science and technology; and the visas extension for 10,000 Chinese students in Europe were to be dealt with favourably (Möller 2002).¹³ Amongst those in favour of strong measures towards China, France went further than most in giving political asylum to a number of those who had been prominent in the democracy movement, partly due to the resonances with the French revolution in 1789 (Foot 2001: 116; Baker 2002: 50). As early as 4 July 1989, however, some foreign ministers of the EC Twelve announced their intention to re-establish political contacts with China. Especially

⁹ Bull. EC 5-1989, point 2.4.7; European Parliament, OJ C158, 26.6.1989

¹⁰ Bull. EC 6-1989, point 2.4.1

¹¹ Bull. EC 6-1989, point 2.3.2

¹² Question no. H-153/89 (EFPB document no. 89/204), the European Parliament, September 1989, Brussels, quoted in Baker (2002), p.50.

¹³ Bull. EC 6-1989, point 1.1.24

Britain and Portugal, both of which needed to resume high-level ministerial visits regarding their ongoing negotiations over the future of retrocession of Hong Kong and Macao (Foot 2001:116). On 2 August 1989, the EC granted an emergency loan of ECU 500,000 (US\$70 million) for flood relief in Sichuan Province.¹⁴ China accepted the donation, but insisted any other diplomatic activities regarding 4 June as interference in its internal affairs. By October 1990, the bans on high-level contacts and co-operation projects were to be gradually eased as agreed by the European Council, due to China's indication of further commitment on international human rights, its positions on the Gulf War and issues regarding Cambodia (Baker 2002: 50).

On the Chinese side, the international pressure on human rights and the collapse of fellow communist countries in Europe posed a severe challenge to the Chinese government. Deng Xiaoping, the country's leader who ordered the crackdown, had famously said in September 1989 that:

*"The West really wants unrest in China. It wants turmoil not only in China but also in the Soviet Union and Eastern Europe. The United States and some other Western countries are trying to bring about a peaceful evolution toward capitalism in socialist countries. [...] We should be on our guard against this."*¹⁵

Deng's position was widely seen as a consequence of the combination of concessions and resistance by China while dealing with Western Europe over human rights disputes (Wan 2001, Nathan 1994). Facing Western economic sanctions, China did not retaliate against or bend under pressure. Deng told former Canadian Prime Minister Pierre Trudeau in July 1990 that:

*"We may not have other abilities, but we have proved ourselves in resisting sanctions. [...] After all, the People's Republic of China has developed under international sanctions for most of the more than forty years of its history."*¹⁶

Moreover, China did not criticize Western Europe as harshly as it did the United States,

¹⁴ Bull. EC 7/8-1989, point 2.2.45

¹⁵ Quoted in James Miles (1994), *The Legacy of Tiananmen*, p. 41

¹⁶ Deng Xiaoping, *Deng Xiaoping Wen Xuan [Deng's Selected Works]*, (1993), Vol.3, Beijing: Renmin Chubanshe, quoted in Wan (2001), *Human Rights in China's Foreign Policy*, pp.70-71

which was explicitly blamed for undermining the Chinese socialist system via ‘peaceful evolution’ amid the fall of communism in Eastern Europe (Shambaugh 1992: 111). With Brussels, the Chinese government was more willing to engage in dialogue, ‘and hoping to divide the West to its advantage, by sending a message that dialogue was a more productive approach than confrontation’ (Wan 2001: 71).

3.1.1.2 Early 1990s: Mercantilists with Principles

The fall of Berlin Wall in October 1989 put an end to the Cold War in Europe. The subsequent disintegration of the Soviet Union in August 1991 brought an end to the bipolar era. By summer 1990, most of the European sanctions had been lifted except the arms embargo. Therefore, the normalisation of relations between the EC and China took a relatively short time in the context of profound changes in the international system (Yahuda 1995, Casarini 2009).

In Europe, the need to restore relations with China had been driven by mainly economic concerns over the recession following the German unification than the political ambition to play a role in international politics at the beginning of the post-Cold War era (Möller 2002: 20). As the 1992 Treaty of Maastricht laid its ground work for future development of the CFSP, the deepened European political integration had to some extent freed Member States’ bilateral relations with China from dealing directly with human rights issues. Until 1994, the European Parliament was the only EU institution being explicit and vocal about China’s ongoing human rights problems.¹⁷ While there was a surge in the number of anti-dumping cases dealt by the Commission in 1994, the Community placed an emphasis on its cooperation projects in China, including financial aid, technical assistance, and economic cooperation.¹⁸

¹⁷ Parliament resolution on relations between the EU and the PRC, in which Parliament raised a number of human rights issues in China, and called on the Community to step up cooperation projects targeted at less favoured regions and ethnic minorities. OJ C 61, 28.2.1994, see Bull. EU 1/2 – 1994, point. 1.3.72

¹⁸ These cooperation project include: a project to develop potato growing in the province of Qinghai (3.1 million ECU) – Bull. EU 7/8-1994, point 1.3.60; a project to set up a China-Europe International Business School (14.85 million ECU) – Bull. EU 7/8-1994, point 1.3.60 and Bull. EU 11-1994 1.3.54; a food aid project worth a total value of ECU 57.68 million, Bull. EU 7/8-1994. Point 1.3.117; a rural development project in Pa-Nam (7.6 million ECU), together with a project for development project in Fujian province (0.7 million ECU) - Bull. EU 11-1994, point. 1.3.58.

Drawn from Germany's 'Asia Concept' of 1993, and the Commission's 1994 Communication on 'a New Asia Strategy', the EU adopted its first Communication on China, entitled 'Long-Term Policy for China-Europe Relations' on 15 July 1995, which shifted the EU's China policy from confrontation towards dialogue and engagement.¹⁹ This change of strategy to constructive engagement was first and foremost in response to the rise of China and the potentialities of its market for European business. It also ambitiously put the EU member states' relationships with the PRC into a 'single integrated framework', which is considered by the Commission as 'a cornerstone in Europe's external relations, both with Asia and globally'.²⁰ Regarding human rights, the Commission reiterated that 'a commitment to human rights and fundamental freedoms is at the heart of EU policy worldwide'. This change of policy is justified by the Commission on the basis that:

*'There is a danger that relying solely on frequent and strident declarations will dilute the message or lead to knee-jerk reactions from the Chinese government... [...] To make progress, all the EU institutions should pursue human rights issues through a combination of carefully timed public statements, formal private discussion and practical cooperation.'*²¹

It then went on to suggest engaging China in bilateral dialogue on human rights, and providing training and technical assistance in the legal and judicial fields to establish a civil society in China, meanwhile continuing to raise China's human rights situation at the international level.²² At this stage, the EU still believes the use of public statements reinforced by detailed discussions in private settings can achieve maximum effectiveness.

In the PRC, economic growth started to reach a spectacular scale, especially after 1992 when the reformers brought new momentum to China's transformation towards a market economy. During this period, China relied on Western Europe as a major source for technology transfer and development aid, whilst itself becoming an increasingly important market for the Europeans.²³ For the Chinese, 1993 was an important turning point in its

¹⁹ COM(1995)279 final.

²⁰ Ibid., Para. A.

²¹ Ibid., Para. B2

²² Ibid.

²³ The Commission's decision to extend the agreement resulted in the PRC establishing the EC-China Bio-technology Centre. Bull. EU 3-1994, point 1.2.76; International cooperation with China regarding the

relations with Western Europe. Different from previous years, the 1993 Tokyo G7 summit declaration did not mention China's human rights or sanctions on China (Wan 2001: 71). In 1994, the Chinese delegation headed by Mrs Wu Yi, Minister for Foreign Trade and Economic Cooperation met with Sir Leon Brittan, European Commissioner for Competition in Beijing. For the first time since the 1989 Tiananmen Crackdown, the Community delegation did not attach human right standards as conditions for the negotiations on Chinese membership of the GATT, instead, it emphasised on:

*'the importance of non-discrimination with the aim of ensuring that China was granted the same concessions by the Community as certain other countries, thus preventing the Member States from adopting policies unilaterally'.*²⁴

On 12 September the same year, the Chinese President Jiang Zemin made a speech on "Four Principles for the Development of the Relationship between China and Western Europe" in Paris, namely: 1) mutual respect in search of common ground; 2) downplaying of differences; 3) mutual benefit; 4) dealing with international problems through consultation and cooperation.²⁵ Although Jiang's speech made little reference to specific issues or policy areas, it shows that China's interests were clearly in having good economic relations with individual member states, therefore Paris was chosen as the venue instead of Brussels.

At member state level, before the EC officially lifted the economic sanctions on financial aid and soft loans on China in October 1990, Germany and France had already breached these sanctions with regard to projects undertaken by their own companies (Nesshöver 1999: 93, quoted in Wong 2005a: 14). For Wong (2005a:14), it was the economic considerations which 'chipped away the collective EC resolve and discipline' and EC countries were competing to get back into the Chinese market as early as the end of 1989.

In this context, the overall trend of the EC/EU policy on human rights in China from 1989 to 1997 lay principally in two domains: 1) bilateral relations between individual EU

implementation of Agenda 21 adopted at the Rio Conference 1992, see Bull.EC 6-1992, point 1.3.127; Bull. EU 7/8-1994, point 1.2.161.

²⁴ Bull. 12 EU 1/2-1994, point 1.3.71

²⁵ *Beijing Rundschau*, Vol.31, No.38 (1994), p.22, quoted in Möller (2002), p.21.

governments and China; 2) holding China to account in multilateral fora, in particular the Commission on Human Rights (CHR) by annually co-sponsoring a resolution criticising China's human rights record with the US. It shows the powerful reality of state sovereignty which makes promoting human rights norms extremely complex and difficult in practice. In this case, not just China remained sensitive over national sovereignty, the lack of the EC level instruments, economic competition and conflicting interests among Member States further undermined the EC's common foreign policy on human rights (King 1999).

3.1.1.2.1 Dialogue between individual EU governments and China

In the early 1990s, the bilateral relations between China and individual EU member states dominated the development pattern of Sino-European relations. On the one hand, as the general trend of trade volumes with China increased significantly, the situation of individual member states varied, depending on the structure of their national economies, positions on human rights and certain political issues. China, on the other hand, insisted on a good political relationship as a precondition for trade deals, as China became increasingly skilful at playing 'divide and rule' tactics to exploit the internal competition among EU member states (Wong 2005a, 2005b, Baker 2002, Wan 2001). Moreover, the UK and France as former great powers maintained a strong propensity in dealing with China bilaterally. This section looks at the cases of the 'Big Three' – Germany, France and the UK – amongst which the policy divergence and convergence were to become the driving force behind the shift towards 'constructive engagement' with China and an increasingly value-based foreign policy in discussions of CFSP structures.

- *Germany*

Germany's foreign policy towards China in the early 1990s can be summarised as three-fold: 1) silent diplomacy on human rights; 2) change through trade which aims at encouraging Chinese political liberalisation; 3) a strict 'one China' policy that does not recognise Taiwan's sovereignty (Sandschneider 2002, Wong 2005a, Weske 2007, Stumbaum 2007).

Following the Tiananmen events 1989, Germany strongly and strictly supported the Council's sanctions policy adopted in Madrid, but the government under Kohl resumed its commercial ties with China even before the economic sanctions announced by the Twelve

were officially lifted in September 1990 (Wong 2005a). In 1993, Germany became the first EU member state to elaborate an official strategy towards Asia in which China was at the core of the largest growth region in the world. This strategy had then depoliticised its economic relations with China and brought Germany significant commercial success in trade. Meanwhile, Germany had also been able to benefit from China's discriminatory trade measures against Britain, France and the US during this period (Möller 1996).

By the mid-1990s, Germany had become China's most important European trading partner (accounting for 40% of all European exports in 1996)²⁶, and China became the biggest market for German exports in Asia. Economic relations between Germany and China are dominated by small and medium-sized businesses, and Germany was much less affected by EU-China textile disputes than other European countries, such as France (Weske 2007:5).

Despite the warm relationship between China and Germany in the early 1990s, individual politicians' views on human rights or deviation from the pragmatic line of China policy have led to occasional setbacks. For instance, former German foreign minister Joschka Fischer has been openly critical of the human rights situation in China (DW News, 1994; quoted in Stumbaum 2007: 85). The vote for a resolution on Tibet by the German parliament in June 1996 brought German-Chinese relations into a diplomatic crisis (Hasenkamp 2004: 444).

- *France*

In the early 1990s, French exports to China were characterised by France's large scale government-led business with China and yet overshadowed by French sales of arms to Taiwan, all of which had strongly politicised the economic relations between both sides. As a consequence, Sino-French trade figures were largely restrained and shaped by political issues during this period.

In the aftermath of Tiananmen 1989, Mitterand's Government was proactive in convincing and supporting the EC to impose sanctions on China. However, in the spring of 1991, France became one of the first European countries to resume their relations with China.

²⁶ Eurostat (2008), *External and intra-European Union trade: statistical yearbook – Data 1958-2006*

Similar to other Western countries which lifted sanctions within two years after the Tiananmen Crackdown, France's decision was based on the precondition that China was to let a delegation of French legal experts visit China and evaluate its human rights situation, which almost undoubtedly ended up drawing a negative report (Cabestan 2006: 328).

As the major host country for Chinese dissidents, the tensions with China over human rights issues were further exacerbated by the French US\$4.8 billion sale of sixteen LaFayette frigates in 1991 and US\$3.8 billion sale of sixty Mirage2000 fighter-interceptors to Taiwan in December 1992 (Mengin 1992: 46). Consequently, China closed the French Consulate in Guangzhou, and excluded French companies from the Chinese market (Cabestan 2006: 329). In spring 1993, French aerospace contractors, for the first time, took the major part of the production process in a large deal with Airbus (six A-340 planes) to China, in partnership with German companies (Taube 2002: 86). Since then, Airbus sales had been the backbone of French exports to China.

Germany's silent diplomacy and mercantilist approach to China made a notable impact on the rest of the EU member states' policies. In 1994, a joint France-China communiqué was issued during Prime Minister Balladur's visit. It shifted many of the French priorities in favour of the PRC by reaching an agreement in which the French government authorised no further arms sales to Taiwan, and recognised PRC as the only legitimate government of China, and Taiwan as China's integral part (Wong 2005a:4). In 1995, Jacques Chirac's election victory reassured this new momentum to develop a close tie with China. In 1997, France became the first country in the Western democratic world to establish a 'comprehensive global partnership (*partenariat global*)' (*quanmian huoban guanxi* 全面伙伴关系) with China.²⁷ On human rights, France pushed strongly for a "constructive dialogue" with China instead of criticising China collectively with other Member States at the UNCHR in April 1997 (Cabestan 2006). Together with Germany, Italy, Spain and Greece, France's breakaway from the established EU policy of co-sponsoring the resolution at UNCHR, was often thought to be linked with big commercial contracts China could offer in return (Baker 2002: 56). As a result, the EU for the first time was left

²⁷ Ministère des Affaires Etrangères de France, *Déclaration conjointe franco-chinoise pour un partenariat global en 1997*, 12 mai, Pékin

without a common policy on China since the events of Tiananmen in 1989.²⁸

On the one hand, the French government has been very keen on improving its trade figures with China ever since early 1990s. The volume of bilateral trade between France and China remained one third of German-China trade in 1996, and it was largely based on big contracts in areas such as energy and transport.²⁹ Since the opening of Chinese market in 1978, only a very small percentage of the Chinese population in the early 1990s could afford to buy luxury goods such as perfumes and wines in which France was competitive (Wong 2005a:3). On the other hand, the political and strategic aspects of Sino-French relations seemed to play a significant role in the economic dimension due to their shared strategic and cultural interests despite having different political values (Cabestan 2006). Since the mid-1990s, both sides came to see each other as ‘an independent player in international relations’ that ‘contribute to a multipolar and culturally plural world’.³⁰

- *The UK*

Before 1989, issues related with Hong Kong’s handover had already strained the Sino-British relations since the negotiation between Deng and Thatcher’s governments in 1984. The events of Tiananmen Square in 1989 raised further anxieties in Britain about the future prospect of Hong Kong, especially with regard to ensuring the political freedom of its people. The appointment of Chris Patten as the new and last Governor of Hong Kong in 1992, however, had worsened Sino-British relations. The pro-democracy Governor had manifested a series of reforms to introduce political freedom into a society which he believed to be the only area in Asia that was free but not democratic (Patten 1998).

Consequently, the UK’s export business during the 1990s was greatly influenced by the handover issue of Hong Kong. Having experienced a substantial increase in export during 1992 and 1993, British exports to China did not enjoy a substantial boost which many other European economies had experienced.³¹ This is seen as retaliation from the Chinese side, due to Chris Patten’s ‘unilateral actions’ to push for political reforms in Hong Kong

²⁸ Presidency-in-Office of the Foreign Ministers, Mme. Cresson, Question No. H/0379/97, EFPB document No. 97/317, September 1989, *ibid*.

²⁹ Eurostat(2008), *ibid*.

³⁰ Ministère des Affaires Etrangères de France (1997), *ibid*.

³¹ Eurostat (2008), *ibid*.

between 1992 and 1997 (Wong 2005a: 20). In 1994, the Chinese government threatened to discriminate in trade issues due to Governor Chris Patten's policy advocating constitutional reform in Hong Kong, whilst Sir Leon Brittan, the then EU Trade Commissioner, warned China that the Union would not overlook one of its member states being singled out this way (Wong 2005a). As a result, British companies in the 1990s, tended to be left out of public bidding processes while seeing contracts taken by other European suppliers, such as German car manufacturers or companies in the chemical industry (Taube: 2002: 87).

Regarding human rights policy, Britain under New Labour, urged EU member states to adopt a common position on China during its EU presidency in the first half of 1998. While representing the EU, the New Labour government also wanted a fresh start with the Chinese government, especially a year after the hand-over of Hong Kong. It is believed that the concern for the peaceful transition to Chinese rule in Hong Kong also played a role in the UK Presidency's human rights agenda (HRIC 1998: 29). When the 1998 UNCHR was due to take place, British Foreign Secretary Robin Cook insisted upon forming a common EU stance at the UNCHR as he believed 'we are much more likely to get progress if we all speak with one voice and all press the same message.'³² However, his position had more to do with having a unified EU voice, than criticising China in international fora (Baker 2002).

3.1.1.2.2 Co-Sponsoring a Commission Resolution

Before 1998, China had not signed the ICCPR and the ICCER. Therefore, the UNCHR in Geneva became the only international platform in which China's human rights situation could be raised (Kent 1995: 10-18).

In such context, the EC Twelve adopted this measure in response to the Tiananmen Crackdown in June 1989, which later became the only form of open political pressure that had survived after other adopted measures faded away by October 1990. Due to the lack of any EC level instruments at the time, this measure fell within the competence of the Member States (King 1999: 323). However, if acting alone, individual member states

³² David Buchan and James Kynge, 'China: United EU Line Urged on Human Rights', *Financial Times*, 16 January, 1998.

might hesitate to sponsor such critical resolutions for fear of commercial retaliation from China. Therefore, a common position regarding China's human rights issues could be seen as a notable success for European Political Cooperation (EPC) and the CFSP in the early 1990s. From 1990 to 1996, Member States had adhered to this approach in response to China's record on human rights except the year 1991 when China's vote was needed at the UN Security Council to endorse the military action led by the US and its French and British allies against Iraq during the Gulf War (Wong 2005a: 14).

In 1995, the Commission proposed a new strategy, advocating the prioritisation of commercial relations in reaction to China's rising economic status.³³ However, much to China's dismay, the EU maintained that 'effective concertation in the human rights debate at the international level is a prerequisite for a successful policy', despite proposing a dialogue approach towards China's human rights.³⁴ In the meantime, a resolution critical of China on human rights was again co-sponsored by all EU member states, and a no-action motion for a resolution was rejected at UNCHR for the first time since 1990. It was a result that concerned NGO groups and supporting governments considered a success, but some EU member states such as Germany and France saw as a failure (Baker 2002, HRIC 1998). Nevertheless, the defeat of a no-action motion and mixed reactions from EU national governments had subsequently contributed to the shift in EU policy on China's human rights situation at the CHR (Baker 2002:54).

Subsequently, the commitment for a resolution on China's human rights problems was not as strong in 1996. Although all Member States continued to co-sponsor a resolution on China at the CHR this year as no-action motion was voted in favour, it was not a legal option later due to the change of composition in the CHR (HRIC 1998: 27). On the Chinese side, Beijing called off the first bilateral dialogue on human rights this year, in response to EU refusal to drop the China resolution at the UNCHR (HRIC 1998: 28).

Towards 1997, the EU position became much less defined. France, Germany, Italy and Spain pulled out from the joint-resolution which caused a division among EU member states (Patten 1998: 304). The change of French policy, for instance, was seen as France's

³³ *A Long Term Policy for China-Europe Relations*, COM(1995)279 final.

³⁴ *Ibid.*

unwillingness to offend China shortly before President Chirac was to sign an export contract for Airbus during his state visit to Beijing.³⁵ Moreover, cultural relativism also started to appear in some EU member states' official discourses. For instance, French President Jacques Chirac stated in 1997 during a visit to China that 'human rights, although a universal principle, are dependent on national circumstances.'³⁶

At the EU level, the European Commission had been advocating forcefully that the resolution be abandoned, whilst the Parliament strongly opposed this move and the Council indicated that consensus was hard to reach.³⁷ When a consensus on China was eventually formed, EU member states decided that neither the Union nor individual members would support a resolution on China, citing the hope of encouraging China to make progress.³⁸ In September 1997, Chinese Foreign Minister Qian Qichen met with the European Troika to discuss a 'non-confrontational' approach to human rights in the margins of the UN General Assembly in New York.³⁹ Subsequently, the Chinese delegation toured France, Luxembourg, Germany, Sweden, Spain and Norway to reiterate that they believe 'the only way to resolve difference is through constructive and earnest dialogue, not confrontation'.⁴⁰ In October 1997, China signed the ICESCR and released the prominent dissident Wei Jingsheng shortly before President Jiang Zemin was due to visit the United States.⁴¹

3.1.1.3 Patterns of Evolution and Dynamics

In the first phase (1989-1997), the EU's human rights policy towards China was characterised as a strategy of pressure and criticism in multilateral fora such as the United Nations, with limited but growing bilateral exchange and cooperation. During this period, human rights were gradually established and consolidated as a key element of the EU's external identity, ever since the most important turning point for international human rights came after the end of Cold War, and subsequently with its inclusion as a standalone

³⁵ 'EU Divided on China Policy', *The Guardian*, 5 April 1997

³⁶ 'Global Partnership', *China News Digest*, 16 May 1997, cited in HRIC (1998), p. 10.

³⁷ Press Release, the General Affairs Council, 24 February 1997; also see Question no. P-422/97; Question no. H/0379/97, the European Parliament, Brussels

³⁸ Bulletin EU 3-1997, point 1.1.5, Council conclusions on relations with China

³⁹ 'Human Rights Stance Stated', *China Daily*, June 12, 1997, cited in HRIC (1998), p. 28.

⁴⁰ Ibid.

⁴¹ Bull. EU 10-1997, point 1.1.2

objective of the CFSP in the 1992 Maastricht Treaty. Meanwhile China had gone through stages of rapid economic growth and diplomatic rapprochement with Western liberal governments; however the stain of events at Tiananmen on 4 June 1989 which drew intensive global attention to its human rights problems received regular and unremitting public and NGOs attention. Eager to enhance its participation in international society after the isolation as a result of 4 June 1989, China was certainly capable of being shamed (Foot 2001: 17). However, this does not necessarily bring China to involuntary compliance with international human rights norms when it comes to its bilateral relations. When facing human rights criticisms by the EU, China often responded with instrumental adaptation, trade retaliation, or diplomatic tactics with an assertiveness reinforced by its flexing economic muscles. For the EU, China's cooperation on multilateral fora was needed and its lucrative market was impossible to resist, thus member states were lured by China's huge market and realised no one could afford to stay out of the race. As member states rushed back to China, the EU was facing an ever more pertinent dilemma between normative concerns and materialistic interests.

Against this background, having to seek a way out of this dilemma while being driven by competing interests of member states, the EU's change of policy orientation with China was almost inevitable. Amid the temptation of China's huge market and the hope that China could be persuaded and changed as China itself had proposed, the EU member states were eventually unable to reach an agreement regarding co-sponsoring a draft resolution against China at the UNCHR in 1997. Consequently, it has led to a move towards a seemingly more normative/non-coercive approach based upon dialogue and unconditional engagement rather than coercive verbal or material sanctions, in such a way as to ease the inherent tensions in the implementation of EU foreign policy to promote both principles and interests.

3.1.2 Phase Two: the Age of Dialogue and Engagement 1998-2009

“There are those in Europe who claim that entering into a dialogue with China on human rights will only lead to cosmetic and diplomatic changes without any fundamental shift in policies and practices in China..... My feeling is that, in the long term, an approach based on exerting as much

pressure as possible by keeping the dialogue alive, but not necessarily at all costs, is the only realistic way of making progress towards a civil society in China based on the rule of law.”

----- Sir Leon Brittan (1998)⁴²

The Year 1998 marked the fiftieth anniversary of the UDHR and the Human Rights Year for the EU. In this year, the EU declared that:

*‘Both internally and externally, respect for human rights as proclaimed in the Universal Declaration is one of the essential components of the activities of the Union’.*⁴³

As a result, the EU decided to issue an annual human rights report each year, initiating a series of new measures to facilitate its work on human rights, including the guidelines on the abolition of the death penalty, fight against torture, protection of human rights defenders, and monitoring elections.⁴⁴

In February 1998, the EU General Affairs Council issued a conclusion with a decision to abstain from sponsoring a resolution at the UNCHR, with which the Parliament disagreed.⁴⁵ The Council listed a number of Chinese improvements to justify its change of strategy, including the release of the *Sakharov Prize* laureate Wei Jingsheng, the signature and proposed ratification of the ICESCR, the Chinese invitation to the High Commissioner on Human Rights Mary Robinson and the visit of the UN Working Group on Arbitrary Detention to China in 1997 (HRIC 1998).

In the Commission’s 1998 Communication, the role of human rights in the EU’s foreign policy is much more articulated than in its previous China policy papers. It states that ‘a commitment to universally recognised human rights and fundamental freedom lies at the

⁴² Speech by Sir Leon Brittan, Vice-President of the European Commission, *Engaging China*, EU-China Academic Network Annual Conference, London, 2 February, 1998

⁴³ ‘Declaration of the European Union on the occasion of the 50th anniversary of the Universal Declaration on Human Rights’, Vienna, 10 December 1998, in *EU annual report on human rights 1998/9*, adopted by the Council, p.54

⁴⁴ General Secretariat of the Council, *Annual Report on Human Rights (1998/99)*, adopted by the Council on October 1999

⁴⁵ General Affairs Council no. 2070; see Press Release of 23 February 1998.

heart of the EU's policy world-wide'⁴⁶, and:

*'The resumption of the EU-China human rights dialogue without any pre-conditions gives the EU a real opportunity to pursue intense discussions which, coupled with specific cooperation projects, remains at present the most appropriate means of contributing to human rights in China'.*⁴⁷

In 1999, China brutally cracked down on Falun Gong, a religious group that had millions of members practicing meditation exercises (Ching 2008:45). At the time, President Jiang was royally received in London on his first state visit to the UK, however, the British government was considered 'less liberal and more hypocritical' to have banned demonstrations and protests in the royal parks.⁴⁸ In December 1999, a delegation of EU leaders, led by EU Commission President Romano Prodi, urged the Chinese government to ratify the two international human rights covenants, and raised the issues of Falun Gong and prosecution of democracy activists during a meeting by Chinese Premier Zhu Rongji who had yielded little ground.⁴⁹ In the same year, the last British governor to Hong Kong, once denounced by the Chinese government as 'a criminal who would be condemned for a thousand generations' (Patten 1998: 142) was appointed EU Commissioner for Foreign Relations. Despite an earlier promise of a tougher stance on human rights in China at a European Parliamentary hearing, Commissioner Patten had been well-received by the Chinese leaders with no reported clashes on human rights with the Chinese during his four-year appointment (Wan 2001: 74).

In May 2000, the EU and China signed a bilateral market access agreement which was a milestone in China's WTO accession process. Unlike the US who attached human rights with trade, the Europeans preferred engagement than confrontation, 'in order to have China in the multilateral institutions and to "control" it from inside' (Panebianco 2006: 140). In 2001, despite China's decision to ratify the ICERCR, the Parliament passed a resolution on Beijing's bid to host the 2008 Olympic Games, urging the International Olympic Committee to reconsider Beijing's candidacy until China had made a fundamental change

⁴⁶ COM(1998)181 final, *ibid.*

⁴⁷ COM(1998)181 final, *ibid.*

⁴⁸ 'China's British Friends', *The Economist*, October 23, 1999, p.18

⁴⁹ 'China, EU Talk Trade, Human Rights', *Associated Press*, December 21, 1999

in its human rights.⁵⁰ In the Commission's 2001 strategy paper on China, the EU pressed for a 'more result-oriented human rights dialogue' through 'implementing and preparing human rights-related assistance programmes in support of the rule of law and legal reform, economic, cultural as well as civil and political rights and democracy'.⁵¹

Despite the twists and turns over issues on human rights which had always been the bone of contention between EU and China, the Commission's 2003 Communication called for a 'Maturing Partnership' and extended the list of cooperation areas towards a wider spectrum.⁵² A month later, China issued its first and only policy paper on the EU, in which it states:

*'the Chinese side appreciates the EU's persistent position for dialogue and against confrontation and stands ready to continue dialogue, exchange and cooperation on human rights with the EU on the basis of equality and mutual respect so as to share information, enhance mutual understanding and deepen cooperation in protecting, inter alia, citizens' social and cultural rights and the rights of the disadvantaged.'*⁵³

The current framework of EU policy towards China is set out in the Commission's 2006 Communication to the Council and the European Parliament entitled '*EU-China: Closer Partners, Growing Responsibilities*'. Central to this policy paper is the theme of cooperation. It states that the EU will reinforce cooperation to 'ensure sustainable development', 'pursue a fair and robust trade policy' and 'work to strengthen and add balance to bilateral relations'.⁵⁴ The concern for China's human rights issues and lack of progress is significantly toned down. Instead, the EU 'should continue to support China's internal political and economic reform process, for a strong and stable China which fully respects fundamental rights and freedoms, protects minorities and guarantees the rule of law'.⁵⁵ Unlike previous policy papers on relations with China, the EU human rights policy does not constitute a separate section, but is integrated in a section titled '*Supporting*

⁵⁰ Bull, EU 7/8 -2001, point 1.2.9

⁵¹ COM(2001)265 final, *EU Strategy towards China: Implementation of the 1998 Communication and Future Steps for a more Effective EU Policy*, Brussels, 15 May 2001.

⁵² COM (2003) 533 final, 'a maturing partnership – shared interests and challenges in EU-China relations', Brussels, 10.September, 2003

⁵³ Chinese Ministry of Foreign Affairs, *China's EU Policy Paper*, Beijing, 13 October 2003

⁵⁴ COM(2006)632 final, Brussels, 12 Oct 2006.

⁵⁵ Ibid., p.4

China's transition towards a more open and plural society'. What is also new to this policy paper is the call to expand people-to-people exchanges, inter-civilisational dialogue, common curriculum development, and knowledge-based co-operation.⁵⁶

For those optimistic observers, it seems that now is a good time to 'put flesh to the bones', and to extend this 'learning dimension' to the area of human rights (Crossick and Reuter 2007). Wiessala (2009:96), on the other hand, suggests that this communication should be read as 'the EU's linguistic-constructive diplomatic arsenal' which had produced 'a new, subtler flavour, emphasising commonality, shared responsibilities and respect for difference'.

In 2008, there was an extended list of incidents and issues between the EU and China that caught intensive media attention. China first occupied a central place in EP debates on external policy following the state crackdown on Tibetan riots in Lhasa in March.⁵⁷ Then, the EU Foreign Minister Council's un-official but high-profile meeting in Slovenia on the situation in Tibet and their attendance to the Beijing Olympics Opening Ceremony in 2008 brought additional strains on the EU-China relations. By awarding the 2008 Sakharov Prize to the Chinese dissident Hu Jia after Wei Jingsheng in 1994, Parliament further infuriated China through acknowledging 'the daily struggle for freedom of all Chinese human rights defenders'.⁵⁸

On the Member State's level, there were major public protests in Paris and other European capitals during the Olympic torch relay, highlighting the strong public concerns on human rights problems in China, particularly in Tibet. These images had stirred up strong nationalistic sentiments in China, which led to a campaign by the Chinese to boycott the French supermarket Carrefour with warnings from the Chinese government about the damage on Sino-French relations. President Sarkozy's meeting with the Dalai Lama in December 2008 had resulted in China cancelling the EU-Summit while France was holding the EU Presidency. Facing China's skilful exploitation of European weaknesses and

⁵⁶ Ibid., p.9

⁵⁷ Bull. EU. 3-2008, point. 1.38.2, Brussels, extraordinary plenary session, 26 March.

⁵⁸ EP President Hans-Gert Pöttering's announcement on Hu Jia's award to mark the 20th anniversary of Sakharov Prize, see European Commission, *General Report of the Activities of the European Union 2008*, p. 226

diplomatic defiance, cases such as the execution of Wo Weihan in 2008 and the British citizen Akmal Shaikh in 2009, and the arbitrary detention and prosecution of Liu Xiaobo, had demonstrated the limit of the EU's declaratory measures.⁵⁹

3.1.2.1 The EU-China Human Rights Dialogue

Although the EU has general dialogues including human rights with numerous countries, the only regular, institutionalised and highly structured dialogue on human rights remains with China until this day. Such a focused human rights dialogue is used by the EU only concerning countries with which the EC has no agreement (as with the former dialogue with Iran), or where the agreement does not contain a human rights clause, as with the 1985 EEC-China Agreement on Trade and Economic Cooperation.⁶⁰

The first EU-China dialogue on human rights was launched at China's suggestion and was held in Brussels in 1995 (HRC 1998: 27-34). At that stage, the EU still stood firmly on the use of international fora to raise China's human rights issues in addition to its bilateral dialogue with China. Following the second meeting in Beijing in January 1996, China pulled out from the session, because EU member states proposed again to co-sponsor a resolution at the UNCHR that year.⁶¹ On 23 October 1997, the EU-China dialogue was resumed. As preconditions, China suggested that the dialogue focuses exclusively on discussion with regard to technical cooperation, such as legal assistance; whilst the EU insisted on raising various issues including Wei Jingsheng's trial, and the situation of the disappeared Panchen Lama which were uncomfortably cut short by the Chinese.⁶²

When the decision to abandon co-sponsoring a resolution critical of China at the CHR was formally adopted by the EU General Council on February 23 1998, the EU justified this policy shift as 'an active, sustained and constructive way' to promote human rights in

⁵⁹ See Council Declaration 16549/1/08 REV1 (Presse351). Wo Weihan, the Chinese scientist and businessman was sentenced to death for espionage, and executed on 28 November 2008 whilst the EU-China human rights dialogue was going on. Wo's two daughters of Austrian citizenship, resorted to Austria and the EU to pressure China for a fair trial for Wo. However, diplomatic efforts on behalf of the EU and Austrian government led by President Heinz Fischer did not influence China's position and practice in this case. British national Akmal Shaikh was executed by lethal injection on 29 December 2009 on charges of drug-smuggling, despite appeals for clemency made by his family and British government officials. It was believed that Shaikh was the first European citizen to be executed in China since 1951. See Watts, J. (2009) 'Capital punishment in China', *The Guardian*, 28 December 2009.

⁶⁰ See Council of the EU, 'European Union Guidelines on Human Rights Dialogues', 13 Dec. 2001

⁶¹ HRC (1998), pp.27-34

⁶² HRC (1998), p. 29

China.⁶³ The EU believes that dialogue enables the EU and China ‘tackle their difference in a frank, open and respectful manner’, and it allows the EU ‘to obtain China’s agreement in principle on a cooperation programme designed to strengthen the rule of law and promote civil, political, economic and social rights’.⁶⁴ In order to show progress that reassured the EU of its decision, China committed to sign the ICESCR just days before President Jiang Zemin went on his first state visit to the US in October 1997. The General Council’s statement also noted other Chinese improvements that justified its change of strategy, including Hong Kong’s peaceful transition to Chinese rule, the release of Wei Jingsheng, and the invitation by Beijing to High Commissioner on Human Rights Mary Robinson.⁶⁵

While the twice-yearly human rights dialogue remains fit for purpose today, there has been an increasing concern that it lacks tangible results.⁶⁶ Sir Leon Brittan warned at an earlier stage that: ‘A dialogue without results will soon run out of steam and will not be acceptable to public opinion in Europe’.⁶⁷ In recent EU policy papers, there have been concerns that the dialogue needs to improve the quality of exchange and achieve concrete results, and be flexible about the source of input, and co-ordinate better with Member States’ human rights dialogue mechanisms with China.⁶⁸ According to a recent EU think tank paper, China has dealt with EU pressure on human rights issues ‘by accepting formal dialogues’, and then ‘turning them into inconclusive talking shops’ (Fox and Godement 2009:8).

While the dialogues of the early 1990s were squarely focused on the central issue of rights violations occurring in the PRC, more recent sessions have tacitly accepted a cultural relativist approach. For instance, in the press releases by the Council following the 24th, 27th and 28th rounds of human rights dialogue, the different political values held by the both sides were mentioned before both sides ‘exchanged’ their human rights concerns over the other side. Chinese representatives have raised the issue of racism, discrimination, asylum-seekers, and ethnic minority and refugee issues in the EU, meanwhile, its own

⁶³ COM(1998)181 final, *ibid.*

⁶⁴ *Ibid.*

⁶⁵ HIRC (1998), p.29

⁶⁶ COM(1998)181 final, p.9; COM(2001)265 final.p3;

⁶⁷ Speech by Sir Leon Brittan (1998), *Engaging China*, *ibid.*

⁶⁸ COM(2006)632 final, pp.4-5

violation of ethnic minority rights was raised by the EU.⁶⁹

One of the major problems with the dialogue approach is the lack of transparency and accountability in this process.⁷⁰ There has been no detailed account of the actual progress provided by either side, and NGOs and independent lawyers and scholars are generally excluded from discussion, sometimes even from cooperation programs. For conducting case-studies in this thesis, I combine EU press releases, academic literature, NGO reports and media accounts available on the dialogue, to piece together a picture of the process. Inevitably, it will be a general overview. Nonetheless, the emphasis of an NPE perspective is to identify normative tendency of the EU's changing human rights policy, rather than the facts and issues involved in the dialogue process.

3.1.2.2 Engagement, Partnership and Cooperation

In order to 'encourage China's own efforts towards opening up, socially and economically', the use of the EC cooperation programme to encourage China to improve its human rights conditions was first mentioned in the Commission's 1995 Communication.⁷¹ It was based on the belief that human rights can be more sufficiently realised and better protected if the China is encouraged to become more open to free trade, market economy, different people and ideas through active and comprehensive engagement with the international community in all policy areas.⁷² However, at the time, cooperation with China as such was still at a very 'small scale'. The EU still relied on the Member States and European NGOs to support and deliver cooperation programmes, including training, technical assistance in the legal and judicial fields.⁷³

⁶⁹ See the Press Release by the Council, Press: 134, Nr: 9995/09, following the 27th round of EU-China Dialogue on Human Rights in Prague on 14 May 2009. Summaries of the 24th and 28th rounds of human rights dialogue (17/10/2007 and 24/11/2009) which also mentioned China's counter-arguments are available on the respective Presidency countries' websites at

<http://www.eu2007.pt/UE/vEN/Noticias_Documentos/20071017UEChina.htm> and
<http://www.se2009.eu/en/meeting_2009/11/24/eu-china_dialogue_on_human_rights>

⁷⁰ For the purpose of conducting case-studies in this thesis, I combine EU press releases, academic literature, NGO reports and media accounts available on the dialogue, to piece together a picture of the process. The emphasis of an NPE perspective is to identify normative tendency of the EU's changing human rights policy, rather than the facts and issues involved in the dialogue process.

⁷¹ COM(1995)279 final, B2

⁷² Ibid.

⁷³ Ibid.

Policy Justification

In the Commission's Communications of 1998 and 2001, it is suggested that giving policy advice and assisting China in its reform process should be the best form of cooperation, as it fits well with China's own top-down approach to reforms and governance in general.⁷⁴ In the Commission's 2002 *China Country Strategy Paper*, supporting China's transition to 'an open society based on the rule of law and respect for human rights' became one of the EU's top priorities for cooperation projects with China.⁷⁵ In the Commission's 2003 and 2006 communications, the wording of 'promotion of human rights' and 'respect for fundamental freedom' which often antagonised the Chinese, have been replaced by 'building the capacity of the emerging civil society, establishing networks between European and Chinese civil society organisations, and encouraging Chinese NGOs to participate in international conferences open to civil society'. They also set out a new trend of 'people-to-people exchange' by encouraging links among academic institutions and social organisations from both sides through their participation in EU-China cooperation projects. For instance, within the framework of Erasmus World and the Marie Curie fellowships, the EU's cultural, educational and research links are established with Chinese universities with the participation of numerous students and researchers from both sides who have been engaged in European studies.⁷⁶

Projects on the Ground

The details of the EU-China strategic partnership were set out by the European Commission in its National Indicative Programme (NIP) for China (2005-2006).⁷⁷ Despite its technical nature, it provides an extremely useful review of the recent Country Strategy Paper (CSP) of 2002-2006, identifying its progress and shortcomings. Particularly, it shows how decisions are made between the EC and its Member States, and between the EC and China, regarding policy dialogues or cooperation programmes with China. The 2005-2006 NIP identified education, intellectual property protection, and good governance and rule of law as the main priorities for the year of 2005, with an indicative budget of €250

⁷⁴ European Commission, *Country Strategy Paper China* (Brussels, 1 March 2002), p.20

⁷⁵ Ibid.

⁷⁶ COM (2003)533 final, p.15,p.23; COM(2006)631 final, p.9

⁷⁷ The legal basis of the NIP for China was Council Regulation (EEC) NO. 443/92 of 25 February 1992 on financial and technical assistance to, and economic cooperation with, the developing countries in Asia and Latin America (the ALA Regulations), [1992]OJ L52/1.

million.⁷⁸ According to this document, the Delegation of the EU in China specified the consultation process on the implementation of proposed cooperation projects, including co-ordination with Member States, communication with the Chinese governmental bodies and consultation with NGO organisations.⁷⁹

A programme titled ‘*Governance Capacity Building*’ became a focal area of the 2002-2006 CSP, in which it states that “Promoting good governance, the rule of law and human rights are key priorities of the EC Co-operation”. One of the largest EU programmes in terms of funding has been the legal and judicial cooperation programme (2000-2004). With total funding of €13.5 million for four years, this programme funded study trips and visits by Chinese lawyers, judges, prosecutors, and other legal professionals from both sides.⁸⁰ It is considered by the Commission as ‘the most important foreign assistance project of its kind in China, which supported the strengthening of the rule of law in China’.⁸¹ Scholarships and funding for cooperation are also available in the area of governance and civil society. According to an assessment conducted by the British Council which led the European Consortium to manage the programme in partnership with the Chinese government, some Chinese participants had expressed that the knowledge they gained in Europe has been brought back to China, and has already started to have impact on both their personal outlook and the institutions they serve.⁸² Other major projects in China funded under the EIDHR budget line include: the EU-China Network on the Human Rights Covenants; Strengthening the Defence of Death Penalty Cases in China; and The Human Rights Micro-Projects Programme.⁸³

In 2007, an independent Country-Level Evaluation of the Commission’s co-operation programme was published.⁸⁴ Based on reviews of the main areas of co-operation since 1998, the EC’s China policies have been rated positively, however, promotion of human

⁷⁸ *National Indicative Programme 2005-2006 China*, DG RELEX/H/2, Brussels, 2004

⁷⁹ Delegation of the EU in China, *National Indicative Programme 2005-2006: China*, pp.9-10

⁸⁰ European Commission, *Report on the Implementation of the Communication ‘Building Comprehensive Partnership with China’*, COM(2000) 552 final.

⁸¹ Statement from Delegation of the EU in China website, http://ec.europa.eu/delegations/china/eu_china/political_relations/human_rights_dialogue/index_en.htm (accessed 10 March 2010)

⁸² British Council, *EU-China Legal and Judicial Co-operation Programme*, 2003

⁸³ NIP 2005-2006, point.2.3.3.1

⁸⁴ *Evaluation of the European Commission’s Co-operation and Partnership with the People’s Republic of China: Country Level Evaluation*, April 2007

rights is not specifically mentioned, nor has any recommendation on human rights policy been made.⁸⁵ *Table 3.1* in the Appendix shows an overall trend between 1989 and 2009 that the EU-China cooperation and EU aid programmes shifted from poverty reduction oriented projects to governance capacity building and eventually knowledge- based cooperation.

3.1.2.3 Patterns of Evolution and Dynamics

In the second phase (1998-2009), engagement and cooperation have overtaken open criticisms as the core strategy of the EU's human rights policy towards China. For the EU, human rights promotion has been ever more visible in EU foreign policy debates and declarations, with an emerging sense of portraying itself as a unique player in the field of human rights during this period. Human rights had become incrementally constitutionalised into a 'value-based' EU foreign policy, with its promotion being institutionalised in specific agenda for implementation. As for China, there has been an increasing deployment of vocabulary, such as 'commonality', 'strategic partnership', 'maturity', and 'constructive engagement' in EU policy papers on China, in line with a general perception of a 'rising' China, and its economic importance to the EU. In practice, human rights dialogues were established between the two sides, coupled with numerous cooperation programs. To that end, the EU had clearly abandoned the rigid and confrontational approach to human rights promotion in China since the late 1990s; instead, emphasis was placed on normative mechanisms of persuasion, argumentation, partnership and engagement.

As demonstrated in the previous section, a confrontational approach only led to instrumental adaptation, deviant diplomatic behaviour, or trade retaliation by China, instead of its norm compliance. Since the late 1990s, the stark dilemma the EU encountered in this phase has developed into one that is between seeking partnership with China and applying its human rights policy with rigour. Underlying this dilemma, however, is not merely the materialistic interests in conflict with the EU's normative concerns, but also the practical need to engage China in moral persuasion to achieve ideational impact in the long term. Furthermore, without directly addressing specific human rights issues, this policy strategy which was translated into educational exchange and knowledge-based

⁸⁵ Ibid.

cooperation should be given credit as a creative effort in promoting human rights through the ‘dare to know’ and the ‘capacity to aspire’ (Hutton 2008: 53, 201), which are key to human rights consciousness, and therefore sit well with an NPE perspective to promotion of human rights. However, this is not to say that EU human rights policy towards China is purely idealistic and normative in nature in the second phase. That trade relations have been and still are the backbone of EU-China relations suggest that purely idealistic or strictly realist approaches are equally insufficient to the understanding of EU promotion of human rights policy towards China.

3.2 Chinese Perspective and Response

Whether the EU has been a ‘normative power’ towards China on human rights issues depends on the extent to which the EU is perceived as being normatively justifiable to promote its standards and persuade China to adhere to its own principles and norms. Therefore, it is important to identify sources of legitimacy from the EU’s perceived characteristics, in other words, to look at Chinese perceptions of the EU’s international role - as an NPE. Turning this perceived legitimacy into normative power, the EU should have the ability to persuade China, and that depends on the Chinese attitudes towards learning while the EU serves as an example.

This section looks at Chinese perceptions of the EU’s international role and China’s human rights discourses. The former indicates the source of legitimacy and potentialities of NPE in the Chinese case; the latter uncovers the extent to which the idea of human rights is genuinely considered by the Chinese authorities as a normative issue or diplomatic tactics.

3.2.1 Chinese perceptions over the EU’s international role

This sub-section provides a general review of Chinese perceptions of the EU’s international role in official Chinese discourses. By ‘Chinese perceptions’, I mean rhetoric and opinions presented by the Chinese authorities. Whereas Chinese academic views on this have been reviewed in *Chapter Two* for theoretical discussion, their impact on China’s policy-making remaining unclear.

Chinese official views of Europe’s role in the world do not exist independently, rather ‘they are largely derivative from broader Chinese understandings of, and preferences for, the

global system and order' (Shambaugh 2007: 128). As reflected in various official documents and speeches, the official Chinese view of Europe's role in the world has roots in China's broader expectations for developing an international order based on non-hegemony, multipolarity, political equality, cultural diversity, and economic interdependence.⁸⁶

When China first established diplomatic relations with the EEC in 1975, Chinese Foreign Trade Minister Li Qian received the first official representative, Christopher Soames, from the EEC who visited China and stated that:

*"Since the founding of the EEC, there has been growing tendency towards unity between the Western European countries. They withstand external pressure and interference and safeguard their sovereignty and independence with unremitting efforts. This is a positive factor in the changing international situation...we are willing to witness that the EEC and the third world develop better relations. It is our belief that, if all countries that are subject to the invasion, interference and control by the super-powers unite together, they will surely defeat the superpowers' conspiracy of seeking global hegemony".*⁸⁷

Although EU-China relations have evolved considerably since then, there remains a strong propensity in Chinese official discourse to view Europe as a unitary actor in international politics. For instance, China's former ambassador to France, Cai Fangbai (2005: 34) suggests that:

"In external relations, the EU endorses global multipolarization and advocates multilateralism in responding to challenges that the world faces. The goal of the EU is to become the dominant force in Europe and sit as equals at the same table with the United States."

So far, only one policy paper has been produced by the Chinese authorities specifically on the EU in 2003 in which China states:

⁸⁶ See Chinese Ministry of Foreign Affairs, 'China's Position on Establishing a New International Political and Economic Order', 18 August 2003; 'China's Views on the Current International Situation', 19 September, 2003.

⁸⁷ New China News Agency 11th May 1975, *China and European Economic Community Establish Official Relations*

*‘The European Union is a major force in the world...the EU is now a strong and the most integrated community in the world...the European integration process is irreversible and the EU will play an increasingly important role in both regional and international affairs’.*⁸⁸

China thus believes that due to ‘differences in historical background, cultural heritage, political system and economic development level’, it is inevitable that both sides do not share views on some issues.⁸⁹ However, China sees ‘no fundamental conflict of interest’ between the two. According to this paper, China’s Europe strategy is promoting closer ties, continuing economic cooperation with of the EU, and more people-to-people exchanges to increase learning from each other.⁹⁰

Within the framework of this policy paper, Chinese Premier of the State Council, Wen Jiabao made several important policy speeches following the issue of the EU strategy paper. On 6 May 2004, he gave a speech to the China-EU Investment and Trade Symposium in Brussels on ‘a comprehensive strategic partnership’ between the two sides.⁹¹ He referred to ‘comprehensive’ as ‘the cooperation should be long-term and stable’, ‘transcending the differences in ideology and social system and ... not subjected to the impacts of individual events that occur from time to time’, whilst ‘Partnership’ as ‘the cooperation should be equal-footed, mutually beneficial and win-win’.⁹² This was the first time the basic terms of the new EU-China relationship were expressly defined by the Chinese authorities.

In China’s official discourse on its relationship with the EU, there is also a strong emphasis on mutual understanding. Regarding human rights, Wen Jiabao stated:

“Mutual understanding is the basis of the cooperation. [...] Most Europeans paid attention to Chinese developments, but they do not understand our progress in other fields, such as politics and social fields. ... we put on the priority of the rights to survival and development and try the best to achieve

⁸⁸ *China’s EU Policy Paper*, 13 October 2003

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ ‘Vigorously Developing a Comprehensive Strategic Partnership between China and the European Union’, speech at the China-EU Investment and Trade Forum, by Premier Wen Jiabao, Brussels, 6 May 2004

⁹² Ibid.

*social justice. Chinese government has helped more than 200 million peasants getting out of poverty, and provided over 20 million urban low-incomers with the lowest life guarantee, which makes an outstanding contribution to the global anti-poverty campaign.”*⁹³

To date, China’s 2003 EU paper remained the apex of China’s assessment of the EU. In subsequent years, China became increasingly frustrated with the EU over a range of issues, including the failure to remove the arms embargo⁹⁴, Europe’s perceived unwillingness to grant China market economy status, European leaders meeting the Dalai Lama, the threats to boycott the 2008 Olympics⁹⁵ and an increasing number of trade disputes and persistent criticism of China’s human rights record, especially from MEPs. China’s deputy foreign minister, Fu Ying, warned that the level of ‘misunderstanding’ between the EU and China was on the rise, because:

*“Europe believes it has the best and that the whole world should copy it, although after a long period of time, many countries that did copy it are not so successful. But Europe does not lose its confidence, you keep on lecturing.”*⁹⁶

Nevertheless, within a longitudinal timeframe, the extent to which the negative reactions on the Chinese side were tactical and temporary remains to be seen. The enquiry through an NPE perspective directs towards a social-constructivist approach to the understanding of the dialectic of ‘agency’ and ‘structure’, and the role of ideas, role concept and identities as drivers of politics and constitutions (Tonra and Christiansen 2004; Wiessala 2009). For EU-China relations, the emphasis is therefore placed on persuasion and knowledge-based cooperation, in which intellectual debates and exchange of ideas matter.

⁹³ HE Premier Wen Jiabao, ‘Strengthening All-round Cooperation and Deepening the Comprehensive Strategic Partnership between China and the European Union’, speech to the China-EU Business Summit, The Hague, 9 December 2004.

⁹⁴ China’s ambassador to the European Union, H.E. Song Zhe, told an audience in Brussels on 12 June that the EU arms embargo on China was “an absurd political discrimination against a strategic partner”. See ‘EU arms embargo against China “absurd”, say ambassador’, *EU Observer*, 12 June 2009.

⁹⁵ Chinese foreign ministry spokesman Ma Zhaoxu stated in October 2009 that “we express strong dissatisfaction and resolute opposition to the statement issued by the European side....we ask that Europe adhere to the principle of equality and mutual respect, and not send wrong signals to ‘Tibet independence’ separatist forces, so that healthy development of China-European relations can be maintained.” See ‘China rejects EU criticism of Tibet executions’, AFP, 31 October 2009

⁹⁶ See Andrew Willis, ‘EU-Chinese “misunderstanding” on the rise, senior Beijing official warns’, *EUobserver*, 7 July, 2010

3.2.2 Chinese strategic thinking, tactics and pragmatism over the issue of human rights

After the Tiananmen crisis in June 1989, many observers believed that the rule of the Chinese Communist Party (CCP) would fall to the ‘third wave’ of democratisation (Huntington 1968; Nathan 1994). Today, China’s rapid economic growth has helped give credence to the government’s claim that China would have descended into chaos were it not for the crackdown.⁹⁷ Domestically, open debate about the Tiananmen killings is still forbidden in mainland China, and the government has never held an official inquiry. Internationally, it quickly restored normal relations with the West and became a ‘strategic partner’ with substantive economic weight, even being seen as representing a normative system in its own right (Crossick and Reuter 2007). It is believed that China’s response to international human rights pressure is best summarised by Nathan (1994, 2003) as being consistent in strategy, flexible in diplomatic tactics and driven by realism.

3.2.2.1 Chinese Strategic Thinking

Since 1989, China has made some progress in bringing itself closer to international law when it came under international pressure to do so, including the signing of ICECR in 1997 and ICCPR in 1989. However, China’s participation in the international human rights regime came partly in an attempt to undercut the West’s support for a draft resolution at the UNCHR that would have openly embarrassed China (Baker 2002). For the Chinese Communist Party, proper adherence to international standards would threaten the Party’s rule, domestic political and social stability in view of its leaders (Foot 2001, Kent 1999).

Considering the international society a European concept by origin, the Chinese government interprets the advancement of human rights as being imposed by the strong over the weak, assuming the values in one civilization are superior over those of another (Foot 2001:44). On the other hand, China believes the concept of non-interference and sovereignty equality as the final defence against the rules of a divided, unequal world. In reaction to the 1999 NATO bombing in Kosovo, China reiterated its opposition to the ‘absurd theory that “human rights transcend sovereignty”’⁹⁸. Johnston (1996: 217) suggests that, while China’s strategic culture has historically exhibited a relatively consistent hard realpolitik, which translates into a preference for offensive uses of force; the EU security

⁹⁷ James Miles, ‘Tiananmen Killings: Were the media right?’, *BBC News*, 2 June 2009

⁹⁸ *People’s Daily*, 14 May 1999, quoted in Foot (2001), p. 44

culture relies upon the concept of comprehensive and cooperative security. While the human dimension of security is an important component of the European security culture, the Chinese primarily focuses upon economic growth and ‘traditional security’ based on ancient military strategy inspired realism (Attinà and Zhu, 2001:92)

Due to China’s disastrous colonial experience starting from the first Opium War in 1839 which was justified by the British in the name of ‘trade rights’ (Golden 2006), there has been a constant warn of the dangers of weak rule, which leads to a strong concern with maintaining domestic stability, which are prioritised over any economic or human rights costs. This is a common theme in academic discussion over Chinese nationalism of the way in which Chinese culture shapes its strategic behaviour (Johnston 1995, 1996; Shih 2003; Twomey 2006). Over the years, the Chinese attitude to Western ideas and political institutions has been complex and ambivalent among intellectual and political elites. As Donnelly (2007:306) rightly points out, anything that associates with Western values is likely to be met with understandable suspicion in the postcolonial context. Therefore, China’s strategic culture, its understanding of rights, and who is entitled to promote them would be the fundamental questions for normative justification of EU external human rights policies.

3.2.2.2 Chinese Official Discourse on Human Rights

Since 1989, the Chinese authorities have made ample use of a new range of methods and institutions to formulate its own vision of human rights, and defend its human rights record. One important aspect of the new Chinese human rights policy has been the issuing of a number of *White Papers* since 1991. These white papers have been addressed more to a foreign than a domestic audience. Not only do they refute Western criticism but also portray the CCP as a defender of human rights. Arguments made by these white papers often refer to the fact that China’s conditions were worse before 1949 when the CCP took power.⁹⁹ In these papers, the Chinese authorities emphasises on the right to subsistence and development as the foundation for developing civil and political rights; Chinese progress in legal and judicial reform, collective rights over individual rights; the instrumental use of human rights as a political leverage against China by Western

⁹⁹ *White Paper, Fifty Years of Progress in China’s Human Rights* (2000); *White Paper – progress in China’s Human Rights Conditions in 1998* (1999); *White Paper – Progress in China’s Human Rights Cause in 1996*, (1997); *White Paper – The Progress of Human Rights in China* (1995).

governments, and the interference of China's internal affairs (Wachman 2001: 268-9). Among these views, the most commonly addressed and deceptively convincing are the alleged Chinese particularity and stage of development.

- *Chinese particularity*

In the early 1990s, the Chinese government often argued that the Western view of human rights does not fit the Chinese cultural and historical background. While accepting the universality of human rights, the Chinese government rejects a single or Western definition of human rights. Therefore, understanding China's attitude towards Western promotion of human rights does require caution and sensitivity over the legacy of European imperialism in contemporary Chinese history. However, one cannot help noticing that this argument can be problematic, given the inherent contradiction between endorsing universality of human rights and defending China's exceptionalism. In rhetorical practice, the PRC thus avoids having international human rights standards imposed by others, while justifying its own strategy to human rights by emphasising China's particular characteristics:

*'China cannot copy the mode of human rights development of the developed Western countries, nor can it copy the methods of other developing countries. China can only start from its own reality and explore a road with its characteristics ... China has ... found a road to promoting and developing human rights which is in line with the country's reality.'*¹⁰⁰

Svensson (2002:321), who has traced Chinese public discourse on human rights since the early twentieth century, suggests that 'there were not many concrete discussions regarding which aspects of Chinese culture render the Western concept of human rights infeasible in China, or whether China could formulate a human rights theory based on its own indigenous concepts'.

- *China's stage of development*

In the same vein, another Chinese argument that human rights are determined by a nation's reality - its *guoqing* (国情), has been central to its claim to special treatment. In the series of *White Papers* concerning human rights, China articulates its own view of human rights

¹⁰⁰ White Paper, *Fifty Years of Progress in China's Human Rights* (2000).

as:

*‘...the top priority is given to the rights of subsistence and development, while taking into consideration the people’s political, economic, social and cultural rights and the overall development of individual and collective rights.’*¹⁰¹

In this way, China emphasises that it is still a developing country, thus the right to subsistence, and economic development should lay the foundation for civil and political rights as its own human rights strategy.

In the EU-China context, this view that focuses on China’s special national conditions and achievement in need of empathy and recognition has been often adopted by the Chinese authorities and scholarly elites to counter European criticisms. Addressing a European audience in The Hague in 2004, Wen Jiabao stated:

*“Democracy and fundamental rights has its historical development process in any country, it is not exceptional for the EU and China. We have already integrated the respect and protection of fundamental rights into the Constitution. The promotion of democracy and fundamental rights are ongoing together with the economic and social development”.*¹⁰²

China’s European specialist Dai Bingran acknowledges that the human rights situation in China was ‘not as good as it should be’, but he stresses things had improved tremendously over the past 30 years since the Cultural Revolution.¹⁰³ He also asked of Europe “a little patience” and to be “a little tolerant”.¹⁰⁴

Overall, the Chinese official human rights discourse is self-contradictory. While China continues to argue that it has a distinctive strategy to develop human right according to its own economic and developmental conditions, it accepts the authority of international human rights standards in principle by signing up to ICCPR and ICECR, and yet justified

¹⁰¹ Ibid.

¹⁰² Chinese Premier Wen Jiabao, Speech to the China-EU Business Summit, The Hague, 9 December 2004, ‘Strengthening All-round Cooperation and Deepening the Comprehensive Strategic Partnership between China and the European Union’

¹⁰³ The ECAN (EU-China Academic Network) Annual Conference, 9 December 2008, see ‘EU-China Conference Tests Ties Difficult’, *Euractiv*, available at www.euractiv.com/en/foreign-affairs/eu-china-conference-tests-ties-difficult-times/article-177879, [accessed on 14 October 2011]

¹⁰⁴ Ibid.

its deviations from these covenants by resorting to other international norms or validating cultural relativism (Donnelly 1999: 632). Furthermore, by arguing that criticism of the Chinese human rights record constitutes interference in its internal affairs or an imposition of foreign values, it undermines China's own position by criticising other countries, notably the U.S (Svensson 2002: 310).

3.4 Conclusion

This chapter aims to demonstrate that it is possible to delineate EU-China relations on human rights with reference to the notion of NPE. To begin with, I presented a historical narrative by chronologically dividing the analytical timeframe (1989-2009) into two phases characterised by the nature of policy instruments and strategy adopted by the EC/EU towards China. The EU in this narrative was treated as a global actor with an emerging sense of international identity, rather than a selective range of member states and EU actors which have operated in combination. In so doing, I have illustrated the evolution in EU policy discourses, the changing nature of policy instruments, and the interactions of major forces at work in the normative dimension of EU-China relations. To that end, a chronological approach allows me to focus the trends and changing nature of EU foreign policy rhetoric and practice, both in general and towards China. As a result, I have reached conclusions both regarding the EU's interaction with China on human rights, and to a lesser extent, the evolution of a value-based identity in EU foreign policy.

First, when the EU's human rights policy on China was based on open criticisms and coercive measures in the first historical phase (1989-1997), the response was often cosmetic change or diplomatic tactics. As the EU's economic interdependence deepened, its collective efforts in holding China accountable at international fora was eventually undermined by the lack of progress and the competing interests of national governments. Whereas in the second historical phase (1998-2009), not only did the EU's international identity in the field of human rights become more pronounced, its policy strategy towards China also showed a clear inclination towards seeking partnership based on persuasion, argumentation, engagement and cooperation. To that end, I argue that this change in policy strategy is both instrumental and normative, and economic interests and normative concerns do not necessarily have to be in conflict with each other. Secondly, I have shown that, on the rhetorical level, the EU has been successful in rendering human rights as part

of its own political identity and self-image. However, in practice, promoting human rights through engagement can be problematic and ineffective because of the inherent tension between engaging with China and standing for its own principles.

In the second section, I have aimed to link the contemporary Chinese official discourse on the EU's emerging international role including the 'European model', to the role of human rights in Chinese foreign policy. I have contextualised the EU's promotion of human rights against the backdrop of the EU's interaction with China on human rights, in such a way as to demonstrate its pertinence to the notion of NPE. The summary of Chinese official discourses has shown that the Chinese official views of the EU's role are largely rooted in Chinese hopes for how international order should develop. However, there is a lack of shared values and a very different political system upon which they form their relations. On the issue of human rights in particular, China has established its own strategic thinking, tactics and pragmatic approach to respond to international human rights pressure. Especially in the post-colonial context, sometimes the source of antagonism from China has not been the substance or arguments on universal human rights, but rather the former European imperialist powers are advancing it. Moreover, the EU-China dichotomies on universalist and relativist paradigms and China's developmentalist view have set their understanding of human rights further apart. To that end, it remains to be seen whether the EU's normative approach to promoting human rights based on persuasion and engagement would harmonise their divergence or simply provide a platform through which they would keep on talking past each other.

Chapter Four

Abolition of the Death Penalty

Introduction

Given that the number of executions is more than the rest of the world combined, and the scope of crimes that are subjected to this punishment, China stands out as an exception in the global abolitionist movement (AI 1989, 2007, 2009). The EU, on the other hand, has been a ‘living example’ in this global campaign and a champion of human rights by sponsoring the UN moratorium on the death penalty and systematically issuing declarations, including towards its major partners such as the US. In the EU’s interaction with China, the death penalty has been one of the central themes and top priorities on the EU’s human rights agenda. The scope of EU concern regarding the use of the death penalty encompasses China’s criminal procedure law, the process of court review and individual cases to which the EU has endeavoured to commit its resources and diplomatic intervention. Therefore, given the EU’s impressive record in developing a common approach on this issue, it is not surprising that the death penalty has been the first and perhaps the most successful empirical case to confirm the notion of NPE (Manners 2002, Lerch and Schwellnus 2006).

To add to the current state of research, this chapter adopts the NPE perspective for China in the area of the death penalty so as to illuminate the nuances in its application on a country specific case-study. To that end, the main hypothesis of this chapter is that the EU can be conceptualised as a normative power towards China on the issue of the death penalty. The focus of this chapter is not the conflicts in the death penalty stance between the EU and China, but a reflection upon how the EU pursues its international role by extending a European norm to the international system, driven by its cultural heritage, moral

consciousness and principle of universal human rights, and how the normative system it represents influences a significant Other - China.

Empirical evidence is presented in the form of an NPE tripartite framework developed in *Chapter Two*. Each section contains evidence and citations from legal studies and policy documentation that are analysed through an NPE perspective. The logic of the structural sequence depends on the NPE conceptual model with each section revealing one part of the theoretical arguments being made in the tri-partite analytical framework.¹⁰⁵ In an attempt to verify the NPE hypotheses, this approach contains elements of description, causality and interpretation. The descriptive component stems from the empirical evidence based on primary data from EU and Chinese official documents, journalistic articles, NGO reports, as well as secondary data on current legal studies by EU and Chinese scholars, citations and references to the EU, China and international law regarding abolition of the death penalty. In order to evaluate policy coherence and consistency, and identify normative impact, this chapter uses causal arguments to some degree, in such a way as to measure the gaps between the EU's abolitionist stance and the actual principles underlying its policy action/inaction, and between EU policy objectives and the actual impact on the ground. To that end, it is important to tap into Chinese official, academic and public discourse to identify any ideational impact of EU normative power on China's death penalty practice.

In so doing, this chapter first asks to what extent the abolition of the death penalty should be regarded as an international human rights norm. It is followed by a summary of Chinese history, law and practice on this issue. Then, it proceeds to apply the tripartite NPE framework to the issue of the death penalty in EU-China relations. This analysis requires looking at how the EU's identity, policy action and external impact shape one another, at the same time, applying normative ethics and critiques across all three stages.

¹⁰⁵ This analytical framework implies a comparative structure as it repeats itself for the second time in the next case-study. A comparative analysis drawn from both case studies will be the focus of the concluding chapter.

4.1 Abolition of the Death Penalty: an International Human Rights

Norm

In the international human rights community, it is widely believed that the death penalty is an issue of human rights, and the global movement for its abolition has been part of the international campaign for human rights (AI 2007:2). However, in the interdisciplinary field of the death penalty studies, not everyone regards the ‘human rights’ approach towards the death penalty as valid, especially outside Europe and the European dominion (Sarat and Boulanger 2005, Cho 2004). In most Asian countries, for instance, capital punishment is said to be sanctioned by deeply embedded cultural norms or ‘mindsets’ (Hood and Hoyle 2008: 7). Apart from countries in Asia, Africa or the Middle East which share certain political and cultural heritages, the USA, stands alone as the only democratic and economically developed country without fully embracing the abolitionist stance (Hood 2001: 334).

This section provides an overview of the extent to which the abolitionist movement of the death penalty has been established as an international norm. It sets the international background for the NPE analysis by asking the normative question as to why we should consider the abolition of the death penalty an international norm, as well as the positivist/legal question of what a human rights approach to capital punishment actually entails.

The purpose of this section is justified in three-fold. Firstly, a summary of the international legal basis for the abolition of the death penalty provides us an external reference point for normative justification of NPE. For Manners (2008: 46), EU principles are generally grounded in the UN system and international human rights law, hence they are universal. In line with his normative position, this section sets out to avoid the danger of an imperialistic and Eurocentric view on ‘what is subjectively considered “good” on the grounds of its presumed universality’ (Tocci 2008:4) by clarifying the legitimacy basis for the abolition of the death penalty. Secondly, through a close examination of the key international legal basis and human rights instruments with regard to the death penalty, we would be able to see how the vagueness of certain legal formation allows retentionist countries, such as China, to justify their death penalty practices by developing their own interpretations of these legal terms. Thirdly, by clarifying what international treaties China

has subscribed itself to, it paves the way for subsequent analysis of the NPE, in which the effects of European influence on China's death penalty stance need to be separated from those of the UN.

4.1.1 A Normative View on the Abolition of the Death Penalty

“Every person shall have the right to life. If not, the killer unwittingly achieves a final and perverse moral victory by making the state a killer too, thus reducing social abhorrence at the conscious extinction of human beings.”

----- Justice Albie Sachs¹⁰⁶

A normative objection to the death penalty refers to the moral message it conveys – that is, the death penalty legitimises the behaviour of killing which the law intends to prohibit (Hood 2004: 4). Opposite to this view is a utilitarian argument for the death penalty based on the assumption of its unique deterrent effects as compared with alternative punishments (Hood and Hoyle 2008: 7). According to a number of important contributions documenting the political trend against the death penalty on an international level, it is believed that capital punishment is inevitably accompanied by unnecessary cruelty, arbitrary judgements, class or racial bias (Hood 2002, Hood and Hoyle 2008; Schabas 1997, 2003; Hodgkinson and Rutherford 1996). A normative view considers such unavoidable consequences of capital punishment as undermining the authenticity and moral weight of the entire legal system (Hood 2004: 14).

In 1959, when the General Assembly adopted a resolution calling upon the Economic and Social Council to undertake a study of capital punishment in law and practice in different countries, one important conclusion was that the abolition of capital punishment would not cause a rise in crime.¹⁰⁷ According to AI reports (1989, 2007), evidence does not suggest that capital punishment has any distinctive or convincing deterrence effect, instead, it should be considered as a form of state violence. In China, due to the political sensitivity of the subject, Lu and Miethe (2007: 23-25) notice that little empirical research on the

¹⁰⁶ Opinion of Sachs J., *The State v. T. Makwanyane and M Mchunu*, Constitutional Court of the Republic of South Africa, case No. CCT/3/94, delivered on 6 June 1995.

¹⁰⁷ See *Capital Punishment*, presented by the French jurist Marc Ancel, UN Doc. ST/SOA/SD/9, Sales No. 62. IV.2. and a complementary report in 1967 by Norval Morris, *Capital Punishment: Developments, 1961-1965*, Sales No. E.67.IV.15.

deterrent and educative effects of the death penalty has been done, and the death penalty discourse is often driven by political or ideological considerations rather than empirical evidence. In this case study, I adopt normative arguments for the abolition; therefore, reject the validity of a utilitarian point of view, due to the failure on the empirical ground.

There are at least two reasons as to why a normative view of the abolitionist position is particularly salient for this case study. First of all, it resonates with the normative quality of the NPE concept regarding ‘why the EU should extend its norms in the international system’ (Manners 2002: 252). Secondly, if international law has no immediate influence on China’s death penalty rhetoric and practice, it is the normative arguments that can be strengthened and persuasive in the long term. This is evidenced by an emerging view among Chinese legal experts, acknowledging abolition as a mark of a ‘civilised society’ in the current internationally shared normative framework.¹⁰⁸

4.1.2 A Human Rights Approach to the Death Penalty

While the basic arguments within the study of the death penalty – moral or utilitarian – have remained essentially the same since the 1980s, the nature of the debate has moved on towards a greater prominence of the human rights approach to the subject matter (Hood 2002, Hood and Hoyle 2008). In the study of international law, Schabas (2002) suggests that we have witnessed the move from the proclamation of a principle to its regulation, and from regulation to its abolition. By principle, Schabas (1996, 2002) points to two fundamental human rights principles that are central to the death penalty debate: the right to life, and the protection against cruel, inhuman and degrading punishment.

In this context, Hood and Hoyle (2008: 7) define the ‘human rights’ perspective as a belief that ‘the death penalty is a fundamental violation of the human right to life’, which is, in essence, ‘an extreme form of cruel, inhuman, and degrading punishment.’ For Manners (2008: 37), if normative power seeks to achieve an international system based on norms, others need to be convinced of their universality. To that end, I consider a human rights perspective to the abolitionist norm as providing a legitimacy basis for normative power because of its universal nature as an institutionalised human rights norm. Therefore, a

¹⁰⁸ *China Daily*, ‘China Questions Death Penalty’, Xinhua News Agency, 27, January, 2005. Reporting on an academic conference ‘International Symposium on the Death Penalty’ hold on 27 December 2004 which provoked the first public debate on whether China should abolish capital punishment.

human rights perspective based on the fundamental principles of ‘the right to life’ and ‘the protection against cruel, inhuman and degrading punishment’ is central to the normative justification of NPE.

4.1.3 International Legal Context

I begin by examining how normative principles with regard to the death penalty are enshrined in the highest level of international law, and present a paralleled development between Europe and China regarding the legal consequences and normative implications of international law in their respective domestic law and penal systems. A general chronological approach is established in order to highlight the progressive evolution of the abolitionist norm.

4.1.3.1 Universal Declaration of Human Rights

Today many abolitionists claim that the death penalty violates the fundamental right to life, which is laid down in *Article 3* of the UDHR of 10 December 1948 (AI 1989, 2007; Hood 2001: 331):

‘Everyone has the right to life, liberty and security of person’.

Although this brief rule is considered as a basic declaration of support for the right to life, no mention is made of the death penalty (Schabas 2002: 13). Moreover, the UDHR is not legally binding upon member states of the United Nations; instead it was intended as a general formulation of principles that serves as an authoritative interpretation of the Charter of the United Nations. As a result, ‘the right to life’ was not a binding legal norm according to this first international human rights document (Franck and Schabas 2003: 53-54; Schabas: 2002: 13).

Due to the vague language and non-binding nature of the UDHR, China’s membership of the UN General Assembly since 21 September 1971 has not led to an official view that the death penalty violates this human right. In the post 1989 period, China was confronted with fierce and unprecedented international criticism of its human rights record, thus the standard approach was to argue that all international critics were interfering in China’s domestic affairs. As a result, China, much like the Soviet Union earlier, tried to make use of selected parts of the UN Charter and the UDHR in order to defend its position that

human rights is a domestic issue (Svensson 2002: 265). It was not until 2004 that the concept of human rights has been added to the Chinese Constitution in which ‘the state respects and safeguards human rights’, and the legitimate basis of its human rights discourse maintains a relativist argument based on China’s historical and cultural particularity without making any reference to the UNHR.¹⁰⁹ With regard to the death penalty, Schabas (2009: 9) argues that China accepts the accountability of the UDHR for the conduct of capital punishment, therefore what China implicitly acknowledges is that the UDHR governs death penalty practices, not the abolition.

By contrast, the interpretation that the death penalty violates the right to life proclaimed by the UDHR would have lacked political vigour, had it not been adopted and reinforced by the Council of Europe and then the EU (Hood and Hoyle 2008: 22). Only two years after the UDHR, the Council of Europe adopted the European Convention of Human Rights (ECHR) which recognises the right to life, in 1950.¹¹⁰ In post-war Europe, when war crimes trials were still fresh in the collective memory, this provision was considered incredibly ‘anachronistic’ at the time (Hodgkinson and Rutherford 1996: 19).

4.1.3.2 The International Covenant on Civil and Political Rights (ICCPR) and the 2nd Optional Protocol

It was not until 1966 that the United Nations gave the protection of human rights a legally binding formula through the drafting of the ICCPR and the ICESCR, both are based on the normative framework provided by the UDHR (Schabas 1996b: 19). As a result, the vague formulation of the right to life in the UDHR is replaced with detailed rules in the ICCPR (Franck and Schabas 2003: 55). For instance, *Article 6* stipulates that:

‘In countries which have not abolished the death penalty, death sentence may be imposed only for the most serious crimes in accordance with the law in force at the time [...].’

However, the ICCPR does not offer a definition or legal specification on what is meant by

¹⁰⁹Official media report on the Second Session of the Tenth National People’s Congress (NPC), ‘Inclusion of human rights in Constitution marks a milestone’, *Xinhua News*, 14 March 2004.

¹¹⁰Article 2 of the Convention states that ‘save in the execution of a sentence of a court following this conviction of a crime for which this penalty is provided by law’. *Convention for the Protection of Human Rights and Fundamental Freedom* (1995) 213 U.N.T.S.221.E.T.S.5.

‘serious crimes’ (Franck and Schabas 2003: 56). It simply conveys that the death penalty is an exceptional punishment not an ordinary sanction, hence allows exceptions from the fundamental right to life to exist, depending on the individual country’s interpretation of ‘serious crimes’ (Frank and Schabas 2003: 56).

In 1989, an important step in the UN’s effort on the death penalty practice was the making of an additional protocol to the ICCPR aimed at abolishing capital punishment in peacetime. What is known as the *Second Optional Protocol* prohibits executions within the jurisdiction of States, and specifies that States undertake all necessary action to abolish capital punishment, with the only exception in the case of very serious crimes of a military nature committed in wartime (Franck and Schabas 2003: 59).

In the ICCPR, the right to life is much more clearly defined, with certain limitations put on the use of the death penalty, especially regarding the restrictions on death penalty practice over non-violent crimes.¹¹¹ For this precise reason, China has declined to ratify the ICCPR and had not signed the Covenant until 1998 (Schabas 2009: 11). *Article 40* of China’s Criminal Law stipulates that: ‘*the death penalty should only be applied to criminals who have committed extremely serious crimes...*’. Although extremely similar to paragraph 1, *Article 6* of the ICCPR, China’s Criminal Law clearly has interpreted it in a very wide manner (Hood and Hoyle 2008:99, Chen 2002: 1). Today, China has neither made any provisions in its Criminal Law to come in line with international standards and reduce the scope of capital punishment, nor offered further explanations regarding how ‘extremely serious crimes’ are defined.¹¹² Instead, the Chinese official policy currently in use states that executions are applied to ‘criminals who have committed particularly serious crimes of extremely profound subjective evil, when social order could not be maintained if they were not killed’ (Hu 2000: 91-92, cited in Hood 2001: 342). When the former Head of the Chinese Food and Drug Administration, Zheng Xiaoyu was sentenced to death and swiftly executed for taking bribes linked to sub-standard medicines in 2007,¹¹³ the Chinese Communist Party’s official paper, *the People’s Daily*, states that:

¹¹¹ See AI, *Death Penalty Blog*, 18 December 2006.

¹¹² Despite the vagueness in its legal provision, the death penalty is currently applied to 68 criminal offences according to Chinese law, including non-violent crimes such as smuggling, counterfeiting currency, and bribery. See ‘China’s Death Penalty Reforms’ (2007), an HRIC Issues Brief, p. 1, Also see Chen, Zexian (2002), p.1 and Macbean (2008), p. 213.

¹¹³ *BBC News*, ‘China food safety head executed’, 10 July 2007.

*‘The Zheng Xiaoyu case offers profound lessons that all public servants, especially leading officials at every level, should take to heart.’*¹¹⁴

In Europe, negotiation of human rights treaties on the use of the death penalty took considerably less time in the Council of Europe than in the United Nations (Hodgekinson and Rutherford 1996, Schabas 2002, Franck and Schabas 2003). On 28 April 1983, the Council of Europe took a step forward by adopting Protocol No. 6 to the ECHR specifically concerning the death penalty.¹¹⁵ By 1989, the European Court of Human Rights observed that capital punishment has been abolished *de facto* in its contracting member states of the ECHR. On 25 February 2000, the EU issued its Memorandum on the Death Penalty in which it stresses the death penalty as ‘being a denial of human dignity’.¹¹⁶

The European Parliament passed a resolution on 12 March 1992, in which it urged European Union member states to ratify *the Second Optional Protocol* without delay.¹¹⁷ As of today, all states of the European Union have ratified *the Second Optional Protocol* (Franck and Schabas 2003: 59). In contrast to retentionist countries, such as China and the United States who maintain that there is no global consensus that the death penalty should be abolished,¹¹⁸ the Council of Europe and the European Union have clearly taken a universalist human rights language and moral authority that are willing to accept the premise that the death penalty is a fundamental denial of their humanity and right to life (Yorke 2008: 45).

4.1.3.3 A Disputed Norm?

According to an Amnesty International report (2010: 28), more than two-thirds of the nations around the world had abolished capital punishment in law or practice by the end of 2009. It also shows that between 1999 and 2009, in average, over three countries a year have outlawed capital punishment for ordinary offences, and/or for all offences.¹¹⁹

¹¹⁴ China Daily, ‘Procedures Detailed for Death Penalties’, 12 March 2007.

¹¹⁵ *The Death Penalty Beyond Abolition*, (1996; 2004), Strasbourg, The Council of Europe Publishing

¹¹⁶ *EU Memorandum on the Death Penalty*, February 25, 2000, Brussels, p.7

¹¹⁷ OJC 62, 12.3.1992

¹¹⁸ AI Report, *Death Penalty Development in 2005*, p. 15. According to this report, 66 countries had refrained from the moratorium resolution at the UNCHR in 2005, citing the lack of global consensus on the abolitionist stance.

¹¹⁹ The statistics for the abolitionists and retentionist countries as of 31 December 2009 are: 95 abolitionist for all crimes; 9 abolitionist for ordinary crimes only; 35 abolitionist in practice; 139 abolitionist in law or practice; and 58 retentionist. See *Death Sentences and Executions 2009*, AI, 2010.

Despite the impressive progress that so many countries had abolished capital punishment owing to domestic developments, diplomacy, or participation in regional and international agreements, it is still far from becoming a well-established international human rights norm (Hood and Hoyle 2008: 32). Schabas (2002: 11) also notices that, notwithstanding the international abolitionist trend and the progressive development of legal norms, abolition of the death penalty has not yet become a customary norm in international law.

Therefore, that the right to life in international law protects the individual against capital punishment allows exceptions for interpretation (Schabas 2002: 7). Consequently, major countries in Asia, Muslim states and North African countries, joined by two industrially developed countries – the United States and Japan - have shown strong resistance to the abolitionist movement since *the Second Optional Protocol to the ICCPR* was adopted by the UN General Assembly in 1989.¹²⁰ The hostility and lack of support from these states had led to an initially timid stance on the direct abolition by the UN, whose primary focus has been on improving legal safeguards for those at risk of being sentenced to death, and limiting the scope of the death penalty (Franck and Schabas 2003: 53). Nevertheless, countries who defy that the death penalty violates international human rights are becoming the minority (AI 2008b, 2009). Thus, the progress of the international movement towards abolition is considered a definitive advancement in development which fewer countries attempt to block or delay (Hood and Hoyle 2008: 35).

The purpose of this section is not intended to demonstrate that the death penalty should not be considered as violating the right to life in the case of China, but rather, to highlight the different interpretations of the fundamental norms that lay the basis for the abolitionist movement, which seems to be largely ignored in the existing NPE literature. This chapter therefore starts with the observation that despite its enhanced legal status in international human rights law, the normative justification of the abolitionist norm is implicit and contested. Moreover, this section illustrates that China remains under no legal obligation to comment on its domestic situation on the death penalty practice today, as it has never ratified any international treaty concerning this practice. Through this investigation, we can at least establish that if China has made progress in relation to the death penalty, either in

¹²⁰ Ibid. In 1989 at the UN General Assembly, 59 countries voted in favour and 48 abstained, 26 voted against the Protocol.

rhetoric or practice, it is unlikely the result of China's participation in international legal processes.¹²¹

4.2 The Death Penalty in China: Cultural, Political and Legal Aspects

According to AI reports, China represents the most outstanding exception in the global abolitionist movement, both in terms of the number of executions which is more than the rest of the world combined, and the scope of crimes that are subjected to this extreme punishment (AI 1989, 2007, 2009, 2010). This section seeks to understand why this is the case by presenting an overview of the Chinese cultural, political and legal dispositions in relation to the relevant concepts and traditions in which the death penalty is embedded. To that end, the primary focus of this section is not the annual number of death sentences and executions, or legal and judicial procedures,¹²² but the cultural and ideological underpinnings, political motivations and legal traditions which give an account of the reasons for or meanings of the use of capital punishment in contemporary Chinese society. By demonstrating the contradictions underlying the official justifications, it also helps us understand whether the European interpretation of the universality of the abolitionist norm holds power. The data and the interpretations presented in this section are drawn from Chinese official depiction of the death penalty practice, and analysed through insights from both Chinese and Western legal scholarship.

4.2.1 Cultural Relativist Arguments

In relation to the death penalty in EU-China human rights dialogue and legal seminars, a central place has been given to the debate on cultural heritage versus universal human rights (Schabas 2009, Kjaerum 2000). From a broader perspective, East Asian countries have been among the most vocal at the United Nations in opposing resolutions against the use of the death penalty by claiming cultural exceptionalism.¹²³ Cho suggests that Asian

¹²¹ See Rosemary Foot (2000), *Right Beyond Borders*, in which she demonstrates China's compliance to international law has been instrumental rather than constructive. Kent (2001) also observes that bilateral monitoring of human rights by members of the international community, provided at most 'temporary, superficial and instrumental change', and did not lead to deep rooted internalisation of human rights norms evidenced by 'continued excessive use of the death penalty' and other human rights violation.

¹²² Amnesty International's Death Penalty Logs may provide the closest estimate of these statistics, however, these counts are generated from Chinese media reports, which at best constitutes a snapshot of selective aspects of the death penalty in practice in China (Lu and Miethe 2007:3).

¹²³ Amnesty International, Asian Office, available at: http://asiapacific.amnesty.org/apro/aproweb.nsf/pages/asian_values. [accessed 12 Jan. 2011]

societies have a different conception of the right to life, and a major component of the ‘Asian values’ arguments in China is Confucianism, which prioritizes justice and retribution (Cho 2004, cited in Hood and Hoyle 2008: 102-3).

One of the most persistent arguments put forwards by China in bilateral or international forums is that there is no real international consensus that the death penalty is a human rights violation, and the global abolitionist movement is largely lead by European powers to press their own agenda on other countries amounting to a sort of cultural imperialism or disrespect for other regions and country with regard to their history and culture (Ho 2005: 278-279, Hood and Hoyle 2008: 102).¹²⁴ Mr. Gan Yisheng, the spokesman for the Central Commission for Disciplinary Inspection of the Communist Party, the Chinese Central Committee, stated at a press conference on 2 August 2007 that:

*‘Different countries have different circumstances and have different cultural background and views on the death penalty. ...The fact that China keeps the death penalty is due to its national conditions and cultural background. There is nothing to be criticized’.*¹²⁵

Ho’s (2005) extensive survey on Chinese views on capital punishment reveals public reluctance to express an opinion and a general confidence in the death penalty as an efficacious deterrent against crime. He observes that:

‘Since China has a long history of capital punishment and an old popular belief in divine retributive justice, there is neither sound reason nor imminent need to uproot this aspect of Chinese cultural tradition’ (Ho 2005: 284).

BBC correspondent Holly Williams also notices that ‘even the most sophisticated urbanites would shrink from the idea of abolishing capital punishment altogether’, and according to one of her Chinese interviewees: ‘there is a Chinese saying that you should kill the chicken to scare the monkeys (*sha ji jin hou*, 杀鸡儆猴).... We need that threat to be there, it is part

¹²⁴ See General Assembly GA/10678, 18 December 2007, ‘General Assembly Adopts landmark Text Calling for Moratorium on Death Penalty’, available at <http://un.org/News/Press/docs/2007/ga10678.doc.htm>. [accessed 12 Jan. 2011] Also see Hood and Hoyle 2008, pp.32-35

¹²⁵ *China View News*, ‘Official: China “prudent” in using death penalty to punish economic crimes’, Xinhua News Agency, 2 August 2007.

of our culture.’¹²⁶

On the surface, the traditional value of ‘a murderer must be put to death’ (*sha ren chang ming*, 杀人偿命) has been so deep-rooted in the long tradition of the Chinese culture that China’s cultural difference constitutes a major obstacle for itself to develop an abolitionist position (Zhang 2005a, 2005b, Qiu 2001, Palmer 1996).¹²⁷ However, both Chinese and Western scholars had found the cultural relativist approach weak and problematic when it comes to the Chinese reality. First of all, Confucianism is considered no longer a living tradition in China; its influence can only be understood in certain institutional context (Chan 1999, Macbean 2008). With the declining influence of Marxism and Maoism, the rising nationalism allows the Chinese authorities to manipulate Confucian tradition for their own political purposes both at home and abroad (Macbean 2008: 219-222).

Moreover, Chinese authorities tried to project an image that the state kills only when absolutely necessary, and acquire legitimacy through carrying out a punishment which is very widely supported by the public (Lu and Miethe 2007). However, it is believed that the lack of public awareness, informed public debates and education on the concept of human rights have reinforced the seemingly strong public consensus in China supporting the use of death penalty (Macbean 2008, Lu and Miethe 2007, Ho 2005, Zhang 2005a).

Furthermore, some scholars also cite Chinese historical secular tradition, and the anti-religious policy introduced by the Chinese Communist Party since 1949 for the lack of moral guidance in today’s Chinese society, particularly regarding human dignity and humanistic ideals (Lu and Miethe 2007, Zhang 2005a, Qiu 2001).

Finally, from a normative point of view, even if cultural factors have contributed to China’s pro-death penalty policy and public opinion; they cannot justify the secrecy of execution statistics held by the Chinese authorities and the extensive use of the death penalty for non-violent crimes (Hood 2009).

¹²⁶ *BBC News*, ‘China Executions “part of culture”’, 6 July, 2001

¹²⁷ A recent research survey as part of an EIDHR project entitled ‘Moving the Debate Forwards: China’s Use of the Death Penalty 2007-9’ also threw light on the so-called ‘prevalent myth’ that Chinese culture demands a ‘life for a life’. See Hood (2009) ‘Introduction’, *Research Survey on the Death Penalty in China 2007-9*, p.4

4.2.2 Political Aspects

It is believed that the death penalty has been an instrument for the maintenance of state control, which has been a central feature in the criminal justice process of the People's Republic of China (Palmer 1996: 105). Especially during the period of rapid economic growth in the post-Mao China, an increasingly draconian criminal justice system remains essential for the Chinese Communist Party to maintain control, preserve social order and ensure political stability (Lu and Miethe 2007, Ho 2005, Palmer 1996). In this respect, I discuss the role of ideological and political imperatives in China's heavy reliance on the death penalty.

4.2.2.1 Ideological Underpinnings

Criminal justice in the Maoist era (1949-1976) was dominated by the political context in which the excessive use of capital punishment to eradicate 'class' enemies was a political necessity to construct a socialist legal system (Zhang 2005a: 4). The government declared that capital punishment should be 'applied to those counterrevolutionaries whose crimes were persistently hostile to the people, and who adamantly refused to repent and reform' (Cohen 1968: 536). During these years, Chinese official policy on the death penalty was in some way similar to that put forward by the Soviet Union. While capital punishment was, in principle, incompatible with socialist ideals which advocate equal access to life chances, it was justified as an 'exceptional measure of punishment which is temporarily applied pending its complete abolition' (Macbean 2008: 208).

After the collapse of the Soviet Union, in contrast to the experience of a number of other socialist regimes, China has retained the proletariat dictatorship (*ren min min zhu zhuan zheng* 人民民主专政) in the post Cold War era. When the popular commitment to socialist ideals has faded away, the Chinese Communist Party had to claim its legitimacy through enhancing material rewards and reinforce a coercive system of criminal justice (Palmer 1996: 123).

4.2.2.2 The Legacy of Maoist China

Maoist China, especially during the Cultural Revolution (1967-1976) left a legacy of arbitrary arrest, detention and torture, extrajudicial executions and the abolition of most legal institutions (Chu 2000). During the Deng Xiaoping era, the Chinese Communist Party

claimed a shift in policy from the lawless Cultural Revolution to ‘rule by law’. This policy has laid the foundation for China’s unprecedented progress in law making when many laws including the current Constitution, Organization Law, Criminal Law and Criminal Procedure Law were drafted and passed (Chu 2000). Nevertheless, these laws inherited the political and ideological overtone of the Maoist era. For instance, in consistency with Maoist principles, the Constitution emphasises on the ‘proletariat dictatorship’, and the criminal law stipulates a number of anti-revolutionary crimes. (Lu and Miethe 2007: 17) Furthermore, while economic reforms have had a dramatic impact on the societal structure in China, a series of ‘strike hard’ campaigns (*yanda*, 严打) have been introduced since 1983 in response to a perception of growing social disorder and public anxiety about a string of high profile crimes (Tanner 2000: 94). These campaigns reintroduced the Maoist tactics of popular mobilisation and had reportedly led to a sharp increase in use of the death penalty.¹²⁸

Since Mao’s death, China has remained a one-party state with the Communist Party dominating the political landscape. On the one hand, Deng and his successor Jiang had ensured the Party’s leadership over governmental and economic affairs. On the other hand, after experiencing the lawless and turbulent period of the Cultural Revolution, the Chinese political elites became increasingly aware of the prospect of stability brought by rule of law.¹²⁹ Thus, the challenge for the Chinese leadership was the balance between social stability and economic growth, both of which were essential for its political survival (Lu and Miethe 2007: 15).

4.2.3 *Legal Dimension of the Death Penalty*

China’s practice of the death penalty as part of Chinese legal tradition is grounded in the

¹²⁸ Due to the lack of official data, it is impossible for monitors such as the AI or Duihua Foundation to provide a definitive picture of ‘strike hard’ campaign in China. To have an idea of the scale of its application, according the EU’s Annual Report on Human Rights (2002:88), a large number of executions took place around the world in 2001, with the highest annual figure since 1996. AI attributes the dramatic increase to China’s “strike hard” campaign against crime and corruption during which the use of capital punishment intensified. AI estimates that during that year, at least 3048 people were executed in 31 countries, 90 per cent of which were carried out in China, Iran, Saudi Arabia and the USA. Also see Tanner (2000), ‘State Coercion and the Balance of Awe: the 1983-1986 “Stern Blows” Anti-Crime Campaign’, *The China Journal* 44.

¹²⁹ Qiu Xinjiu, ‘Yanda de xingshi zhengce fenxi’ (An analysis of the “Strike Hard” criminal policy), in Fazhi de shiming, pp.197-205, quoted in English translation in Zhang Ning (2005b) ‘The Debate over the Death Penalty in Today’s China’.p.8

state's collectivist responsibility system since ancient times and strengthened by the earlier period of socialist China (1949-1978), both of which share a culture of collectivism, and intolerance of deviance and crime (Lu and Miethe 2007: 22). This section attempts to reveal the extent to which the rule of law in China is understood differently in comparison to the conception adopted in Western liberal democracies.

4.2.3.1 The Rule of Law in Contemporary China

Since Mao's death in 1976, China has undertaken a series of significant economic, political and legal reforms. Deng placed the need to develop democracy and consolidate the system of "rule by law" (*yi fa zhi guo*, 依法治国) as the central principles of the Communist Party. Deng's successor Jiang brought in the idea of 'rule of law' (*yi fa zhi guo*, 依法治国) in which he acknowledged the lack of a formal tradition within the new legal system and the formation of citizen's legal consciousness, and further stressed that the state and political officials must lead by example, and advocate the importance of law and disseminating legal knowledge to ordinary citizens.¹³⁰

According to Peerenboom (2004), the drive to implement rule of law responds to the leaders' desire for legitimacy both at home and abroad. It mandates that the government be held accountable for its actions, as well as people's demands for greater protection of their rights and interests as economic reforms progressed drastically (Peerenboom 2004: 115). In theory, establishing rule of law requires the policies of the Chinese Communist Party (CCP) to be translated into law and become legally binding. In practice, the Party often acts at odds to, or in the absence, of a clear legal basis (Peerenboom 2004:116). For the CCP, a primary challenge to introduce rule of law is to define more clearly what an acceptable role the Party should play, in order to be consistent with general requirements of a thin rule of law (Macbean 2008: 211).¹³¹

¹³⁰ *People's Daily*, 'The Second Lecture on Law Held by the Central Committee of the Chinese Communist Party', 21 January 1995. Also see Jiang, Zemin (1992) 'Intensifying the Reform and Open-door Policy', *Action Guide for the Twenty-First Century*, Beijing: Xinhua Press, p.26. For further analysis of Deng and Jiang's policies, see Lu and Miethe (2007: 19) and Peerenboom (1999)

¹³¹ According Macbean (2008: 211), the state's 'thin' concept of law refers to being scientific and rational without layers of meaning building a richer, more moral and ethical framework for judging state actions. He argued that it is difficult for the government to openly context the 'thicker' rule of law concept without undermining its rhetorical commitment to law and the development of a 'harmonious' society.

Despite the Chinese leadership's reform efforts to strengthen law, law enforcement and legal consciousness, the structural problems in judicial independence, procedural fairness, system of law educational qualifications of judges and prosecutors have severely hindered the reform progress (Lu and Miethe 2007: 20-21; Peerenboom 2004: 116). These structural problems are said to be deeply rooted in the Chinese cultural legacy of collectivism and 'rule of man' (*ren zhi*, 人治). They are often understood from the continuation of a cultural relativist view, in which both the Chinese leadership and its people have historically shown a strong desire for peace and stability, and being particularly fearful of disorder and chaos (Lu and Miethe 2007: 23).

4.2.3.2 Crime Deterrence

A belief in the deterrent effect of the death penalty has deep roots in China. For instance, 'kill the chicken to scare the monkeys' (*sha ji jin hou*, 杀鸡儆猴) is a popular traditional saying. Ho's (2005) interviews and surveys show that the Chinese public almost unanimously share their government's belief in the social utility of capital punishment and in its deterrent effect.

Although the Chinese authorities often cited the crime deterrence effect and its popular support as justifications for the death penalty practice, the Supreme People's Court has never released any detailed statistics and considers them a State secret (HRIC 2004: 39). Therefore, the crime deterrence justification may contradict China's secretive policy action. If the Chinese authorities indeed believed that the death penalty deterred serious crime and is mandated by public opinion, it should not have kept its statistics and scope of application confidential, as publicity ought to be desirable in this case (Schabas 2009: 8; AI 2009). For Wang Shizhou, an outspoken Professor of Law from mainland China, the reason for the Chinese statistics on its death penalty practice to be treated as state secret is that the figure would be simply too high.¹³²

4.2.4 Death Penalty with Chinese Characteristics?

This section demonstrates that China's use of the death penalty is largely influenced if not

¹³² The article is originally published in *Xinhua Digest*, No. 15 (2004), but it can only be accessed outside of mainland China at the website of the Chinese University of Hong Kong: http://www.usc.cuhk.edu.hk/wk_wzdetails.asp?id=3400. [accessed 16 Jan.2011]

determined by its historical secular tradition, the legacy of communist practice and legal tradition. It also clarifies the contradictions manifested in the CCP's policy and justifications on the use of capital punishment. These contradictions, between the adoption of a cultural relativist approach and destruction of its own traditional cultures and values; between the reform-spirited jurisprudential proposals and intensified coercive 'strike hard' campaigns; and between legal theory and reality, have all revealed the fragility and instrumental nature of Chinese law (Lu and Miethe 2007: 19-22; Zhang 2005a: 4).

At the time when the EU embarked on the global abolitionist campaign against the death penalty in 1998, the official rhetoric and limited scholarly debates were still very much centred around the theme of 'Death Penalty with Chinese Characteristics' (*juyou zhongguo tese de sixing zhidu*, 具有中国特色的死刑制度).¹³³ As a collective effort, Chinese academics and officialdom often denied the global abolitionist trend using deceptive statistics and facts, and justified China's choices as 'good for the well-being of the people', hence lawful, justifiable and cosmopolitan (Ho 2005: 280-285). Ho (2005: 285) also notices the prevailing inaccuracy in these historical narratives at the time, however, he acknowledges the imprint of many Chinese traditional legal norms and values on the redistributive justice system and the overwhelming popular support.

Many believe that it is unlikely for China to cast off its tradition and ideological commitment to capital punishment easily (Lu and Miethe 2007: 16; Palmer 1966: 131).¹³⁴ Nevertheless, there has been a noticeable change in attitude since the end of 1990s, evidenced by China's readiness to discuss the issue of the death penalty with the EU and other Western abolitionist countries over official human rights dialogues and seminars. Furthermore, the possible exemption of all economic crimes from the use of the death

¹³³ In the 1990s, leading Chinese legal experts such as Guo (1998), Hu (1995) and Li and Shen (1992), Zhao *et al* (1992) and Gao *et al* (1994) have published extensively on justifications of the death penalty based on cultural relativist and crime deterrence accounts. Zhao and Hu have been regular participants of EU-China human rights dialogue and legal seminars, their recent publication has indicated their arguments for the death penalty have changed towards pro-abolition, but with reservations concerning China's current political and economic situation.

¹³⁴ As an independent scholar, Li Shulun studied the characteristics of the Chinese law across different political systems and eras, and concluded that the Chinese law had historically emphasised '*the state, instead of the society; authority, instead of rights; the rule of man, instead of the rule of law; concentration of power, instead of separation of power; collectivism, instead of individualism; substantive issues, instead of separation of power; substantive issues, instead of procedural issues.*'

penalty has now been openly discussed in legal and academic circles,¹³⁵ and the official media have also joined the debates on possible reforms.¹³⁶

This section aims to show that despite the powerful arguments based on cultural relativism and crime deterrence, abolition as an international norm is not impossible to be realised in China. Through discussing the Chinese cultural, political and legal context on the use of the death penalty and the inherent contradictions in the official justifications, I intend to demonstrate that the normative justification of the abolitionist norm as far as China is concerned. To that end, I argue that China's recent rhetoric change should be considered the sign of the Chinese 'perceived legitimacy' of the universal abolitionist norm, upon which the normative justification of NPE is based throughout this case study.

Moreover, one has to bear in mind that China is a single-party socialist country, in which the role of the Party as the leading party is very different from those in liberal democratic rule of law states. China's communitarian if not neo-authoritarian understanding of rights attaches greater importance to collective rights rather than the civil and political rights of individuals. The Chinese Communist Party has been successful in constructing a discourse using Chinese culture and the threat of cultural imperialism, to prevent other countries from interfering with its internal affairs (Peerenboom 2004: 123). Therefore, making reference to Western liberal understanding of universal human rights might only lead to 'temporary, superficial and instrumental change' (Kent 2001: 143). Furthermore, China often points to the United States – a major advocate of democratic values and political freedom – to support its view that the death penalty does not violate human rights (Hood and Hoyle 2008: 35). To that end, I intend to argue that invoking the normative or humanistic aspect of the abolition in China might be potentially more persuasive and lead to more deep-rooted internalisation in the long term than rights arguments.

¹³⁵ A collection of essays by leading legal experts, as a signifier of the final abolitionist gold was published in 2004, edited by the former retentionist scholar Zhao Bing zhi (ed.), *The Road of the Abolition of the Death Penalty in China, Regarding the Abolition of the Non-Violent Crime at the Present Stage*, Remin University of China, Series of Criminal Jurisprudence (44). For a comparison to Zhao's earlier view on the death penalty, see Zhao (1992)

¹³⁶ *China Daily*, 16 December 2004, 'Revision of Death Penalty System Urged'; 27 January 2005, 'China Questions Death Penalty', reporting on a high-profile academic event 'the International Symposium on the Death Penalty' at Xiangtan, Hunan province.

4.3 EU Normative Power against the Death Penalty in China

To demonstrate that the EU is a normative power towards China through the death penalty case, I aim to establish a systemic linkage between the NPE framework and the EU's promotion of the abolition of the death penalty in China. The empirical data are analysed through a tripartite framework, each stage deals with the way in which this principled idea is constructed, the mechanism through which normative power is diffused, and any normative impact in China is identified and judged.

The interpretivist approach seeks to provide not only causal explanations of events, but also to give an account of the reasons for or meanings of action (Goldstein and Keohane 1993: 228). In so doing, this tripartite analytical approach provides a set of procedures for discovering answers to research hypotheses generated from the NPE concept.

4.3.1 Normative Principle

The EU normative principle on the death penalty is based on a commitment to complete abolition in order to enhance human dignity and promote human rights within the EU, and through its diplomatic initiatives.¹³⁷ The European Parliament adopted a 1994 resolution issued by the Council of Europe, stating:

*'The death penalty has no legitimate place in the penal systems of modern civilised societies, and its application may well be compared with torture and be seen as inhuman and degrading punishment'.*¹³⁸

And has made it clear that:

'The European Union is opposed to the death penalty in all cases and has consistently espoused its universal abolition, working towards this goal.'

This interpretation of the death penalty rejects the argument that is justified by cultural and religious relativism, or the overriding power of state sovereignty (Hood and Hoyle 2008: 25), thus conveys a principled opposition to the death penalty as a violation of fundamental human rights.

¹³⁷ Drawn from *EU Memorandum on the Death Penalty*, Council of the European Union, February 25, 2000, Brussels, p.1; and *Guidelines to EU policy towards third countries on the death penalty*, Council of the European Union, 3 June 1998, p.1

¹³⁸ Parliament Assembly of the Council of Europe Resolution 1044(1994), 4 October 1994.

This section asks how and why the abolition of capital punishment has become part of the aims and objectives in EU foreign policy. For Manners, the EU is a normative power because of its '*sui generis*' (2006d: 174) nature, and 'its normative identity predisposes the EU to act as a normative power' (2002: 242). In this vein, I seek to illuminate the role of the abolitionist norm in constructing a European identity and formulating EU foreign policy, through looking at EU identity, interest and behaviour regarding its adherence to the abolitionist norm.

To begin with, I ask how and why the abolition of the death penalty became a constitutive principle of the EU. I do so by tracing the European cultural and ideological roots which lay the philosophical and normative foundation for its global abolitionist campaign. Then, I proceed to explore the relationship between identity and interest, as well as the link between internal and external practices. Finally, I evaluate the extent to which the EU's pursuit of the universal abolition is coherent and consistent through virtue ethics.

4.3.1.1 Normative Identity

In Manners' case study on the death penalty (2002), he traces the agents of change that have shaped the EU's abolitionist policy and the way in which it has been diffused through a set of norm diffusion mechanisms. Manners (2002: 240) claims that 'the EU's normative difference comes from its historical context, hybrid policy and political-legal constitution', however, he did not draw close attention to the formation of the EU's normative difference in his case study, especially concerning not just legal and political dimensions but also the cultural and historical origins of the abolitionist movement which are especially relevant in both Chinese official and academic perceptions of European abolitionist stance. This section thus explores the relationship between European abolitionist stance and European identity, and asks why European penal identity has a cosmopolitan disposition.

- ***Cultural, moral and philosophical tradition***

'The authority that exercises the right to punish should always be uneasy about that strange power and never feel too sure about itself.'

-----Foucault (1981: 461, cited in Yorke 2008: 43)

The first movement for reform in capital punishment since Ancient times in all parts of the world was generated by ‘the liberal utilitarian and humanistic ideas spawned by the Enlightenment in Europe towards the end of the eighteenth century’ (Hood and Hoyle 2008:9). The ‘turning point’ arrived when the Italian humanist Cesare Beccaria argued that if the state uses the death penalty to enforce upon its own will, it legitimises killing which the law seeks to prohibit, hence, the death penalty was both inhumane and counterproductive (Hood and Hoyle 2008: 10; Franck and Schabas 2003: 49-51). Yorke (2008: 65-67) suggests that the public discourse adopted by the Council of Europe against capital punishment is a departure from the traditional Enlightenment philosophy which accepts the death penalty as part of the social contract, and the ‘conscience’ of Europe. Zimring (1987: 11) notices the symbolic nature of the abolition which has been expressed through the ‘collective consciousness’ in Western Europe. Derrida considers the European ‘public discourse against the death penalty’ not as a specific philosophical exposition, but a declaration ‘through inter alia considering a “history of cruelty”, the “impure” phenomena of executions, and state sovereignty vis-à-vis political pressure allied by the European supra-national structure’. (Derrida 2004: 199,201,202, 204,212, quoted in Yoke 2008: 44)

- ***Identify formation as political objective***

‘In the United Europe of the future, the solemn abolition of the death penalty ought to be the first article of the European Code we all hope for’.

-----Albert Camus (1957, cited in Yorke: 43)

In the study of cultural politics of European integration, telling the stories of ‘common cultural heritage’ and creating a ‘European consciousness’ have proven difficult in many respects (Delanty 1995; Shore 2000). For Shore (2000: 26), identity formation and cultural building have become ‘explicit political objectives in the campaign to promote what EU officials call *I’idée Européene* or “European idea”’.

Why has the abolition movement become a primary human rights concern in European Union policy in international relations? Why does the issue of the death penalty seem to

predominate over all others on European human rights foreign policy agenda?¹³⁹ Manners (2002: 251) suggests that the EU might wish to be seen as in ‘the abolitionist vanguard’ in such a way to project a unique international identity against retentionist states led by the US and China. Girling (2005: 113) adds that European narratives on the death penalty derive from ‘the historical inevitability of this position’ and ‘the paradox of the continuing practice of the death penalty by “cognate others”, i.e., the United States.’ Schmidt (2007:125) argues that, while the United States constructed its identity based on ‘individual liberty and laissez-faire economics’, the EU is in the course of creating its own identity, largely driven by political elites.¹⁴⁰ Therefore, just like the construction of NPE discourse itself (Diez 2005), the abolition movement emerges as one way of distinguishing the European self from the American ‘Other’.

However, Manners (2002: 251) suggests that the significance of the EU’s commitment to abolition is normative rather than instrumental, given the examples of extradition to countries with capital punishment, including terrorist suspects to the U.S. The European penal identity has a cosmopolitan disposition and ‘extends the field of relevance and mutuality to embrace distant others as symbolically significant’ (Tomlinson 1999: 207, quoted in Girling 2005: 113). As the EU’s 2002 Memorandum stated:

*‘Effectively, for the European Governments the death penalty as a means of State punishment rapidly revealed itself as a denial of human dignity, which is a fundamental basis of the common heritage of the European Union as shared values and principles.’*¹⁴¹

The German Foreign Minister Joseph Fischer spoke on behalf of the EU at UNCHR in 1999, and described this particular European community sentiment as:

¹³⁹ On 16 June 2010, EU High Representative for Foreign Affairs and Security Policy Baroness Catherine Ashton stated that the work towards abolishing the death penalty worldwide is an EU as well as a personal priority in a speech to the European Parliament.

¹⁴⁰ Many have noticed that the abolitionist movement in Europe is essentially elite-driven (Manners 2002: 251; Schmidt 2007: 124), the Council of Europe (2000c) recognised that in some Member States the public continue to favour the death penalty. Zimring (1987, 2003) suggested that the death penalty is not matter of great concern for most people in the abolitionist countries, and the lack of public interest explains why the death penalty ceases to be a pressing public issue once the abolition is accomplished. Yoke (2008: 67) believed that ‘any identified European conscience may change when confronted with difficult questions of life and death, and possible public opinion which calls for the death penalty may manifest a serious political challenge.’

¹⁴¹ *EU Memorandum on the Death Penalty*, *ibid.*, p. 3

‘...the European Union’s conviction that States whose justice system kills are not meeting their responsibility to set an example to society. Europeans believe that the death penalty cannot be justified either ethically or legally and has not proven to be an effective means of combating crime.’¹⁴²

It is important at this stage to distinguish the role of the EU and the Council of Europe in this case study. Unlike the Council of Europe, the EU did not attach great importance to the death penalty as a human rights concern in the past (Schabas 2009). It was only in the 1990s when individual EU member states had abolished the death penalty, that a very vocal European voice had gained prominence on the world stage (Girling 2005, Zimring 2003). While the Council of Europe has played a vital role in making abolition a norm in post-War Europe, it is the European Union that has taken the abolitionist movement internationally since the mid-1980s, through making the abolition a precondition for membership and sponsoring many of the United Nations proposed resolutions and memoranda concerning the death penalty (Manners 2002: 246; Girling 2005: 114).

• ***Legal Dimension***

The EU’s legal encounter with the death penalty started when the European Parliament adopted a draft resolution on the abolition in Europe 18 June 1981, following a proposal by the French Rapporteur Marie-Claude Vayssade acting on behalf of the European Parliament’s legal committee.¹⁴³ This resolution made a strong case for abolishing capital punishment in the European Union and urged its Member States to implement the *European Convention on Human Rights* (ECHR).¹⁴⁴ In 1986, the European Parliament further called upon its Member States to ratify Protocol No.6 to the ECHR.¹⁴⁵ After a series of motions and declarations issued by the Parliament, a 1992 resolution urged all

¹⁴² Statement by Mr Joseph Fischer, Federal Minister for Foreign Affairs of the Federal Republic of Germany, on behalf of the European Union, Geneva, 23 March 1999, at the 55th session of the Commission on Human Rights, Geneva, 22 March – 30 April 1999

¹⁴³ OJ No. C 172, 13.7.1981. This resolution expressed its ‘strong desire that the death penalty should be abolished throughout the Community’ and invited the Member States ‘to amend their legal provisions, where necessary, and to take ensure that the European Convention on Human Rights is amended accordingly’ (p.72)

¹⁴⁴ E.C. Doc.A2-0187/85; *Official Journal of the European Communities, Debates of the European Parliament*, C 36, 17 February 1984.

¹⁴⁵ E.C. Doc. A3-0062/92/PART A, Report of the Committee on Foreign Affairs and Security on the Death Penalty, Rapporteur: Mrs Maria Adelaide Aglietta. At the time, the legislation in Greece, Belgium, Italy, Spain and the United Kingdom still provide d for the death penalty, this resolution called upon these states specifically to abolish it together, even though Greece and Belgium had not practiced the death penalty for decades. (p.2)

Member States to ratify *Protocol No.6* as well as the *Second Optional Protocol* to the ICCPR.¹⁴⁶

The first legal instrument that provides the EU a mandate to promote abolition was the 1997 *Amsterdam Treaty* which came into force on 1 May 1999. The *Final Act* of the treaty includes a number of declarations, among which a ‘Declaration on the Abolition of the Death Penalty’ comes the first. The Amsterdam Treaty and its declaration on capital punishment then became the impetus for the General Affairs Council of the European Union to adopt the ‘Guidelines to EU Policy towards Third Countries on the Death Penalty’ on 29 June 1998 (Schabas 2002: 302-309; Franck and Schabas 2003: 66-67; Hood and Hoyle 2008: 22-23).

It is believed that these EU legal instruments on abolition are not only based upon the international human rights framework, but also they tend to push the law further than what has been laid down in international law. Schabas (2002: 7) notes that ‘the ECHR is the only instrument to define a comprehensive list of exceptions to the right to life. The United Nations system chose to avoid such an approach, thus leaving the scope of exceptions to the interpreter’. Franck and Schabas (2003: 61) notice that the 1950 ECHR predated the conventions agreed upon by the UN based on the content of the UDHR, as it would take much longer for the UN to agree on legally binding conventions than among the member states of the Council of Europe, all of whom share pronounced cultural consensus and political similarity. Schabas (2002:305) further adds that the EU 1998 Guidelines follow the classic statements of limitations on capital punishment that are found in *Article 6* of the ICCPR as well as in the Economic and Social Council’s resolution entitled ‘Safeguards Guaranteeing Protection of those Facing the Death Penalty’. To this end, the legitimacy of the EU’s principled idea with regard to the death penalty is manifested in ways in which it is defined and formulated within the framework of international human rights law. As a result, when the UN became more involved and assertive in pushing for a global moratorium,¹⁴⁷ the battle against the use of capital punishment in Europe was already over.

¹⁴⁶ Ibid., p.5

¹⁴⁷ UN. Doc. A/RES/62/149, Resolution adopted by the General Assembly, Moratorium on the use of the death penalty, 25 February 2008, Geneva

4.3.1.2 Normative Interests

While constructivists look into how identity construction is designed to transcend the dichotomy between ideational and instrumental dynamics (Wendt 1995, Finnemore and Sikkink 1998, Hopf 1998), the debate on NPE has increasingly moved beyond its purist formation towards a co-existence between its strategic and normative dynamics (Aggestam 2009, Youngs 2004). To distinguish normative interests from traditional strategic or selfish interests, Forsberg suggests that normative interest does not exclude self-interest, it can be a wider interest for common good, or milieu goals (Wolfers 1962:73-77) instead of possession goals (Forsberg 2009: 11-12). Laïdi (2008b: 4) suggests that the EU is structurally disposed to extend its norms into the world system in order to keep up its global prestige and advance its own interests through the support of international system.

The position taken here is not to fundamentally challenge the EU's genuine commitment to its normative principle of universal abolition, nor to say the EU does not have self-interests. Rather, it is to identify whether there is a rationalist dimension to the EU's promotion of the abolitionist norm, either as instrumental use of human rights norms, or a strategy employed to achieve a milieu goal.

First of all, there is a rather instrumental argument for the EU's adoption of abolitionist norm as a constitutive principle and foreign policy objective. After signing the Maastricht Treaty in 1992, the 'crisis of confidence' in the EU allowed the EU institutions and Member States to reflect upon its collective identity, and one route was through acceding to the ECHR (Manners 2002: 246). From the outset, the EU has developed itself into a hybrid of supranational and intergovernmental entity characterised by the willingness of member states to yield national sovereignty (King 1999: 313, Manners 2002: 240), in which case, the nature of global abolition which transcends state sovereignty resonates with the EU's post-Westphalian quality. Therefore, in the progress of political integration, the elite driven abolitionist movement is considered as an attempt by the EU institutions to cultivate a 'banal Europeanism' by unifying its people and to establish a distinctive European identity (Girling 2005: 117-118; Schmidt 2007: 129).

Secondly, the fact that abolition is prioritised over other human rights norms in EU foreign policy suggests that this choice can be seen as driven by strategic consideration. Schmidt

(2007: 130-131) argues that EU pursuit of abolition not only serves the common good for all mankind in their own mind, but also puts ‘a distinctive moral stamp on EU foreign policy’ which provides the EU with the moral superiority over the United States.

The 2008 EU Memorandum on the Death Penalty states that:

‘Long ago European countries, [...] made a choice for humanity, abolishing the death penalty and thus fostering respect for human dignity. And this is an ultimate principle that the EU wishes to share with all countries,[...]. If it succeeds in reaching this goal, both the EU and those countries will have furthered the cause of humanity, as Beccaria foretold. The EU thus invites the USA to equally embrace this cause.’¹⁴⁸

Thus, the EU’s normative interest is also revealed in the milieu goal the EU has subscribed itself to, both for the prominence of its voice at the world stage, as well as for the common good. Furthermore, the distinctiveness of EU external identity is manifested through the cultural/moral battle within transatlantic relations over the definition of what is means by being ‘European’ (Girling 2005, Schmidt 2007).

4.3.1.3 Self-binding Behaviour

‘Self-binding’ to international norms refers to the EU’s formal commitment to international law and multilateralism (Manners 2007, Sjursen 2006b, Diez 2005). This is evidenced by its Member States unanimously subscribing to the ICCPR and the OPT2, as well as the EU’s crucial role in advancing the abolitionist norm within the UN system. By the time the Amsterdam Treaty was drafted in 1997 which recalls the signature of the 6th Protocol to the ECHR among its member states, the death penalty had not been practiced in any of the EU countries, and had been abolished through the ratification of the OPT2 in most Member States.¹⁴⁹ In fact, not only do the EU member states practice what they have agreed within the UN human rights framework and incorporated it into EU guidelines, the ECHR as a regional instrument adopted by the EU, had provided a model for many international and regional human rights laws, notably the ICCPR (Schabas 2002: 259).

¹⁴⁸ *EU Memorandum on the Death Penalty*, Delegation of the European Union to the USA, 10 June 2008, p.7

¹⁴⁹ *Guidelines for EU Policy towards Third Countries on the Death Penalty*, Council of the European Union, 3 June 1998, Brussels

As the abolition in Europe has gone so much further ahead compared to the rest of the world with the international organisations arriving rather late in this movement, the European history of abolition consists of unconnected events without the binding effect of international law (Zimring 1987: 19; Girling 2005: 114). Especially in the early phases of the abolition throughout the 1960s, each European country had its own debate about the death penalty and each country abolished it afresh (Girling 2005: 115). Zimring (1987: 20) notices that this was a period of change even without a common ‘European-wide’ discourse on abolition, therefore, each of the European abolitionist countries discarded the death penalty ‘in its own way and at its own pace but toward the same end’.

4.3.1.4 Virtue Ethics

‘If ever one were justified to speak of “virtuous circles”, this is certainly such a case; clearly good examples and peer pressure have played a very important role in convincing governments and legislators alike that the death penalty belongs to a primitive and uncivilised past.’¹⁵⁰

-----Daniel Tarcschys, Secretary General of the Council of Europe

‘The EU considers that abolition of the death penalty contributes to the enhancement of human dignity and the progressive development of human rights’.¹⁵¹

----- EU Guidelines on the Death Penalty (1998)

For European political elites, the abolition of the death penalty seems not only a matter of human rights, but a virtue to do with ‘the enhancement of human dignity’.¹⁵² In the first stage of the tripartite analysis, I interpret this virtue through exploring its cultural, moral and philosophical underpinnings as well as political and legal foundations, all of which have formulated the shared idea of the common good and a ‘European conscience’.

To normatively judge the EU’s principles, Manners (2008: 56) suggests that virtue ethics emphasises the importance of the character or traits which serve as guidance in the EU’s

¹⁵⁰ *The Death Penalty Beyond Abolition*, 1999, the Council of Europe Publishing, p.2

¹⁵¹ *EU Guidelines towards third countries on the Death Penalty*, 1998, p. 1

¹⁵² *Ibid.*, p.3

pursuit of external actions. This interrogation reveals that these characters and traits can be understood as ‘humanistic values, ethical points of view and human rights reasons’ against the death penalty as ‘a denial of human dignity, which is a fundamental basis of the common heritage of the European Union as a union of shared values and principles’.¹⁵³

In order to live by this ‘virtuous example’, virtue ethics suggests that the EU’s policies should be both coherent and consistent in a normative sense (Manners 2008: 55). By normative coherence, Manners suggests that (2008: 55-56) the EU should promote its constitutive principles which come to shape its own internal and external practices, and are in line with ‘a more universalizable and holistic strategy for world peace’. Whereas normative consistency entails that the EU itself should comply with the norms which it seeks to promote (Manners 2008:56). Therefore, in order to judge normative principles, one should look beyond the positivist dimension which focuses on the level of consistency and coherence in legal treaties and policy action, towards normative justification of EU principles. Manners (2009a: 2) suggests that ‘normative power should primarily be seen as legitimate in the principles being promoted’, in which sense, legitimacy of its principles are embedded in international treaties, conventions, and agreements, particularly those in the UN system. Aggestam (2009: 28) argues that EU foreign policy principles are normatively justifiable if they are agreed within the UN even before being embraced by EU treaties.

Consistency in the EU promotion of abolition reveals some nuances in the way we ought to envisage its legitimacy as suggested above. The EU has repeatedly called upon third countries to sign and ratify the ICCPR and the OPT2 in bilateral or international forums, its own legitimate basis for abolition has been the ECHR which it interprets and applies as a regional system. According to Schamas (2002: 26), instruments such as the ICCPR adopted many concepts from the ECHR, meanwhile adapting them into international legal thinking and interpretation on the scope of human rights. Therefore, one could argue that the EU’s norm on the death penalty locates itself within the international human rights framework, but has also been successfully projected to the international legal system during its formation.

¹⁵³ *EU Memorandum on the Death Penalty*, 25 February 2000, p. 3

Coherence, on the other hand, is reflected the EU's adoption of the *Charter of Fundamental Rights*, which prohibits the extradition of offenders to any country where the death penalty might be imposed unless a special guarantee is given.¹⁵⁴ In the case of China, the issue of the death penalty provides concrete confirmation that the EU is not just 'obsessed' with attacking China, the EU is also firmly against the use of capital punishment in the U.S which has been the major target of EU human rights instruments on abolition (Harris 2009: 17).

Furthermore, the American exceptionalism among Western liberal democracies has important implications in understanding the construction of EU penal identity and the uniqueness of its foreign policy. Not only does the American case serve as a rival explanation in understanding the distinctiveness of EU foreign policy identity, it also becomes an essential reference point for retentionist countries to reason against rights arguments for the abolition based on universality of liberal democracy and rule of law (Hood and Hoyle 2008: 35). Lastly, this interrogation of EU normative principles also consists of an implicit comparison with the Chinese official arguments for the use of the death penalty, in such a way as to illuminate the challenge to the legitimacy and liberal universality of EU normative principles.

4.3.2 Normative Action

In the *Guidelines towards third countries on the death penalty* adopted in 1998, the EU sets out the circumstances for its policy action, including the use of declarations, démarches, human rights reporting, encouraging third countries to accede to international instruments, raising the issue in bilateral and multilateral co-operation.¹⁵⁵ The legitimacy basis for these policy actions are the UN minimum standards. It means where capital punishment is in practice, the EU calls for its use to be gradually restricted only for 'the most serious crimes'¹⁵⁶ as laid down by international law. Moreover, the EU is also a leading institutional actor and lead donor in supporting NGOs who are actively engaged in the

¹⁵⁴ See *EU Memorandum on the Death Penalty*, EU Delegation of the European Union to the USA, February 25, 2000. According *EU Annual Report on Human Rights 2001*, 'the EU decided for the first time to become "Amicus Curiae" in proceedings before the Federal Supreme Court of the United States' concerning an individual case. (p.75)

¹⁵⁵ See UN General Assembly (UNGA) Declaration 19 December 2006, UNGA Resolutions 62/149, 18 December 2007, and 63/168, 18 December 2008, EU and Council of Europe Initiative for 'the European Day against the Death Penalty', 10 October.

¹⁵⁶ Ibid.

abolitionist movement worldwide, including Amnesty International, Hands off Cain and Human Rights Watch.¹⁵⁷

Instead of focusing on EU foreign policy instruments, this section seeks to understand the ways in which the EU shapes the discourse on the death penalty in China. Thus, the central focus of this analysis is how the abolitionist norm the EU stands for is diffused through a discursive form of power. It is suggested that a normative power sets standards in world politics with its influence exerted by norms themselves (Diez and Manners 2007: 175). From a normative power perspective, NPE is not a foreign policy toolbox, but an independent power of EU norms that influence others (Aggestam 2009: 31, Diez 2005: 616). Through five mechanisms outlined in the NPE framework, I aim to identify norm diffusion with and without policy action, and evaluate its normative justification through deontological ethics.

The empirical data for analysis is a combination of EU official documents, media reports, NGO reports, and documentation from both sides of EU-China cooperation programmes from 1998 to 2009 since the EU has undertaken a diplomatic mission to persuade other nations on the issue of the death penalty.

4.3.2.1 Persuasion

For Manners (2009a:12), persuasion in promotion of principles by NPE refers to constructive engagement, institutionalisation of relations, particularly the use of ‘multi- and pluri-lateral dialogue’ with third countries. Forsberg (2009: 16) suggests that persuasion requires using articulate rhetoric, personal or collective appeal and applicable knowledge. In this case study, I consider EU-China human rights dialogue fitting neatly into this category.

During the course of the twice yearly human rights dialogue between the EU and China, China’s the death penalty practice has always been among the key issues of discussion since 1998.¹⁵⁸ Other platforms such as major political dialogue meetings at ministerial and

¹⁵⁷ See ‘EU Policy on Death Penalty’, *European Union External Action*, available at http://eeas.europa.eu/human_rights/adp/index_en.htm [accessed 14 Jan. 2011]

¹⁵⁸ According to the EU annual reports on human rights between 1998 and 2009, the EU had repeatedly raised its concern over the death penalty in all of its human rights dialogue with China.

Summit levels have also been used by the EU to raise its views on the death penalty.¹⁵⁹

In 1996, China broke off from the dialogue in protest of EU Member States' intention to co-sponsor a resolution with the United States at the UNCHR. When the dialogue was resumed in 1998 on the condition that the EU had abandoned the tabling of a resolution on China, the then serving Vice-president of the European Commission, Sir Leon Brittan, justified the adoption of this non-confrontational approach by citing progress and commitments made on the Chinese side, one of which is that China would report on the implementation of UN Covenants in Hong Kong and would not introduce the death penalty in Hong Kong.¹⁶⁰ It is argued that the EU's substantive concern for the issue of the death penalty might have also played a role in the policy shift towards a dialogue approach, as the practice of tabling a resolution together with the United States, a country with capital punishment practice, would mean that the draft resolution would not be able to call for an abolition, but only criticise its excessive use (Kinzelbach 2010: 39).

However, the level of EU expectation from the use of dialogue approach to influence China's death penalty practice had changed over the years, largely depending on the domestic situation in China and how China responded to the EU's pressure. At the early stage of the dialogue between 1998 and 2000, the EU did not start with a strong abolitionist stance; instead it focused on excessive use and pushed China to make sure that all appeals are eventually dealt with by the Supreme People's Court, and to release data on the execution numbers and other relevant information on China's death penalty practice.¹⁶¹

In 2001, eight benchmarks were finally established and agreed by the Chinese after a two-year drafting process for assessing the effectiveness of the dialogue, one of which states that progress in the area of the death penalty is defined as:

'compliance with ECOSOC guarantees for the protection of those sentenced to death and restriction of the cases in which the death penalty can be imposed, in

¹⁵⁹ Annual Report on Human Rights (2002), the Council of European Union, p. 46

¹⁶⁰ Statement by Vice-president Sir Leon Brittan, Meeting with Wei Jingsheng, European Commission, 16 March 1998, in European Parliament Committee on Foreign Affairs (1998), Bilateral EU-China dialogue on human rights: Subcommittee on Human Rights, Delegation for Relations with the People's Republic of China: Notice to Members, No. PE 226.487, Strasbourg.

¹⁶¹ EU Annual Report on Human Rights (1998/9), p.87; *ibid.*, (2000), p.29

*keeping with Article 6 of the ICCPR; provisions of statistics on use of the death penalty.’*¹⁶²

In response to China’s ‘strike hard campaign’ which resulted in a significant increased number of executions, a seminar complementing the dialogue rounds was held specifically on the death penalty on 11-12 May 2001 in Beijing.¹⁶³ In the same year, having signed a *Memorandum of Understanding with the Office of the High Commissioner for Human Rights* and making several reform efforts in the judicial and legal system, China expressed in the dialogue session its decision to ratify the ICESCR later that year, the EU then stepped up its pressure on the death penalty by calling for ‘limitation on the use of the death penalty with a view to its abolition’.¹⁶⁴

In 2003, China had sentenced Tenzin Deleg Rinpoche, a Buddhist lama, and his assistant Lobsang Dhondup to death for their alleged involvement in a bomb attack in 2002 in Chengdu, Sichuan Province, which were the first death sentences for political crimes committed by Tibetans in twenty years.¹⁶⁵ Dhondup was immediately executed in January 2003, whereas Tenzin Deleg was sentenced to death with a two-year execution reprieve.¹⁶⁶ After several declarations, démarches and EU resolutions were issued,¹⁶⁷ the Council stated that:

*‘The EU regretted, however, that there was little progress on core issues such as the death penalty. [...] The EU also repeated its strong condemnation of the execution of the Tibetan monk Lobsang Dhondrup. The EU made it clear that the way in which the trial of Lobsang Dhondrup and Tenzin Deleg Rinpoche was handled was felt as a breach of the trust built up by the EU-China dialogue.’*¹⁶⁸

The EU’s doubts over China’s commitment to the dialogue soon mellowed over two ritualistic years of 2005 and 2006. However, a series of escalations in tension began in 2007, when China refused to participate in a Human Rights Legal Seminar on ‘the right to

¹⁶² General Affairs Council, 2327th Council meeting, 22-23 January 2001, Brussels.

¹⁶³ EU Annual Report on Human Rights (2001), p. 43

¹⁶⁴ EU Annual Report on Human Rights (2001), p.190

¹⁶⁵ See AI, ‘Miscarriage of Justice? The trial of Tenzin Deleg Rinpoche and related arrests’, Sept. 2003

¹⁶⁶ Ibid.

¹⁶⁷ EU Resolution, Bull. EU 12-2002, point 1.2.7; Council Conclusions, Bull. EU. 3-2003, 1.2.3

¹⁶⁸ EU Annual Report on Human Rights (2003), the Council of European Union, p. 37

fair trial' on the day of the event on 10 May, due to its opposition to the attendance of two NGOs invited by the EU under the German Presidency.¹⁶⁹ Before the seminar, the EU stood by its invitation and believed that there were no grounds to exclude *Human Rights in China* (HRIC) and *China Labour Bulletin*. The Chinese side initially did not boycott the event, but reacted angrily on the day and walked out *en masse*, stating that the two groups were non-EU and anti-China.¹⁷⁰ Both the EU and the Chinese delegations had refused to compromise on their stances and the seminar was annulled.¹⁷¹ While NGOs publicly applauded the EU for not yielding to China's pressure over the principle of the freedom of expression (HRIC 2010), both sides did not issue public statements regarding this incident.¹⁷² Subsequently, the official human rights dialogue took place according to schedule in an 'open and constructive atmosphere'.¹⁷³ Moreover, the EU praised China on a number of legislative reforms during the dialogue session, including a review by the Supreme Court of all death penalty cases starting from January 2007 which was considered a major progress since 1979. However, when the EU requested to see statistics on death penalty cases in China, it was again declined by the Chinese counterparts.¹⁷⁴

From a normative perspective, the decision taken by the German Presidency may have been a strong sign of EU normative commitment in the support of human rights defenders and its principle of freedom of speech. However, it seemed to be counterproductive in engaging China in a normative procedure in which the EU wishes to be persuasive. In contrast to the beginning of the dialogue in 1995 and the resumption in late 1997, the walk-out in May 2007 demonstrated that China could outmanoeuvre the EU through its deviant behaviour, and its human rights stance has clearly toughened since the dialogue approach was adopted.

¹⁶⁹ See 'German-Chinese tension: seminar in Germany cancelled', 19 May 2007, available at <<http://www.earthtimes.org/articles/news/64257.html>>, [accessed 1 Feb. 2011]

¹⁷⁰ Interestingly, the NGO participants recalled this event afterwards that some European academics complained about the EU's handling of China's discontent, believing the EU should not have given floor to the NGOs in an academic event; whilst some Chinese academic participants expressed their regrets about the decision taken by the head of the Chinese delegation team, who immediately collected the Chinese academics' passports after the walk-out decision was made. See 'The EU-China Human Rights Dialogue: Perspective from NGO Representatives', HRIC (2004)

¹⁷¹ Ibid.

¹⁷² The EU only mentioned this event briefly in its Annual Report on Human Rights(2007), expressing 'its very clear expectations that such an incident would not be repeated', p.22

¹⁷³ Presidency-in-Office of the Council of the European Union, Germany, 2007, *the 23th round of the EU China Dialogue on Human Rights on 15/16 May in Berlin: Press Release*. Berlin.

¹⁷⁴ EU Annual Report on Human Rights (2007), p.22

Compared to the execution of Lobsang Dhondup in 2003, the case of the medical scientist Wo Weihan in 2008 had taken the tension between the EU and China over the human rights dialogue further to an unprecedented level. Wo Weihan was sentenced to death for espionage and executed on 28 November 2008 - the final day of the EU-China human rights dialogue in Beijing. Because Wo's two daughters are Austrian citizens who looked to Austrian government and the EU to demand a fair and transparent trial for Wo, the subsequent three-year diplomatic efforts behind the closed doors,¹⁷⁵ including pleas by Mr. Heinz Fischer, Austrian President and the EU Troika, had proved in vain.¹⁷⁶ During the dialogue starting on 24 November 2008, the case was mentioned in the discussion, but the Chinese delegation did not inform the EU that Mr. Wo would be executed soon. The EU believed the timing of the execution as an affront, and according to Austria's Foreign Minister, Ursula Passnik:

*'This execution comes precisely on the day of dialogue between the EU and China on human rights shows the lack of consideration and the harshness with which this case has been handled. This [must] be considered as a premeditated affront by the entire EU'.*¹⁷⁷

In the Council's declaration, the EU condemned the execution of Wo in 'the strongest terms', stating that:

*'The execution seriously undermines the spirit of trust and mutual respect required for this EU-China dialogue on human rights.'*¹⁷⁸

As this event became highly publicised, the spokesman of the MFA, Qing Gang responded on 1 December 2008 that:

'...Wo Weihan is Chinese citizen... He could not be treated in a different way only because he has some foreign relatives. ... The EU and Austria's accusation against the Chinese judicial authorities intervened brutally into

¹⁷⁵ Before the dialogue starting on 24 November 2008, the EU had already made a démarche on the case of Wo Weihan. See Council of the European Union (2009), *CFSP Instruments (Declarations, Démarches, Heads of Mission reports and Political Dialogue meetings)*, 2008, No.14922/09, Brussels

¹⁷⁶ Not only the EU and several Member States had shown their special concerns on this case, the U.S, UN's special procedures and NGOs had also repeatedly intervened on this case. See 'China condemned for Wo Weihan execution', AFP, published in *The Times*, 29 November 2008.

¹⁷⁷ 'China condemned for Wo Weihan execution', AFP, published in *The Times*, 29 November 2008, *ibid*.

¹⁷⁸ *Declaration by the Presidency on behalf of the European Union on the execution of Mr Wo Weihan in Beijing*, Council of the European Union, 28 November 2008, Brussels. 16547/1/08 REV 1 (Presse 351)

*Chinese judicial sovereignty, trampled the spirit of the rule of law, and undermined the basis of the healthy development of the bilateral talks on human rights.*¹⁷⁹

The impact of Wo Weihan's case had attracted much public attention in Europe, China and Taiwan,¹⁸⁰ it had also directly resulted in the cancellation of EU-China legal seminars in the following year of 2009.

The dialogue approach to the death penalty issue reflects the EU's ambition to project its constitutive principles through a non-coercive approach of reasoning. However, the dialogue with China on this issue has demonstrated several difficulties in implementing this approach, especially in circumstances where the EU norm is not necessarily an international norm, and China's willingness to engage in the dialogue is largely instrumental. From a normative perspective, the legitimate basis for the reasoning process in this case is defined by the EU Guidelines within international law which does not prohibit the death penalty, as illustrated in *Section One*. Initiating the dialogue approach without a clearly defined objective and later establishing the benchmark based on minimum international standards have therefore weakened the EU's power in projecting its principle. As a result, discussions taking place during past dialogue sessions ended up aiming at limiting the use of the death penalty to a few well-defined, most serious crimes, instead of a 'for-against' debate.

Moreover, the human rights dialogue with China is the only regular and institutionalised dialogue on human rights between the EU and third countries. Therefore, China is treated as a special case, in which the universality of human rights would inevitably be on the agenda in order to 'allow candid exchange of views on EU issues of concern'¹⁸¹. According to previous press releases, the process of the dialogue sessions is often described as being conducted in:

¹⁷⁹ 'EU and Austria's accusation on spy execution rejected', *Xinhua News Agency*, Beijing, 1 December 2008.

¹⁸⁰ Wo Weihan was accused of spying for Taiwanese government; however, he was allegedly convicted through torture.

¹⁸¹ See for instance *EU Annual Report on Human Rights (2003)*, p.36

‘[...] a constructive atmosphere and was an occasion to express concerns and differences of opinion with regard to the implementation of international human rights standards in China and the EU.’¹⁸²

As a central place was given to the debate on cultural heritage versus universal human rights on the issue of the death penalty during EU-China human rights dialogues (Kjaerum 2000: 5), the presumed strength of persuasion as a means to diffuse norms through reasoning is both limited by the certain circumstances in which China is willing to participate, and undermined by the fundamental challenge it posed to the legitimacy of the abolitionist norm.

4.3.2.2 Invoking Norms

This model of norm diffusion refers to a mechanism of normative power that activates commitments which the target country subscribed itself to. What can be invoked could be the agreements between the EU and third powers, or any international agreement if violated (Forsberg 2009: 17). Therefore, even if the EU cannot persuade China to adopt an abolitionist policy through a dialogue approach, it can still invoke certain agreements to which China is a party. On the issue of the death penalty, China has yet to bind itself to any of those international human rights instruments, but démarches were made based on China's signature of the ICCPR which provides certain restrictions on the use of this extreme punishment. In this section, I look at how démarches, as an alternative approach to the dialogue, have been used to invoke China on its general use of death penalty and individual cases.

Since 1998, the EU has been active in lobbying China on the issue of the death penalty through démarches, which have been carried out based on standards defined by the ICCPR and the EU guidelines on the death penalty.¹⁸³ The former Commissioner Chris Patten spoke of his frustration with the human rights dialogue at the European Parliament at 25 October 2000 that:

‘There were references to China and we know well the record there. It is an issue that we raise again and again in our human rights dialogue. I cannot

¹⁸² For instance, see press release on the 24th round of the EU-China Dialogue on human rights in Beijing.

¹⁸³ See *Council Conclusion on Human Rights and Democratisation in Third Countries*, 8 December 2009, p.2

*say hand on heart, or even hand off heart, that it is getting us very far, but we continue to raise the issue’.*¹⁸⁴

Given its confidential nature as opposed to public statements, the practice of *démarches* can only be traced from EU annual reports on human rights and the annual reports from the Council to the European Parliament on the main aspects and basic choices of CFSP. However, none of these documents reveal the details of content.

Reviewing EU Annual Reports on Human Rights from 1998 to 2009, it shows that China is amongst the top recipients of EU *démarches* every year – both on individual cases as well as on the death penalty which is subjected to regular *démarches* under the EU’s guidelines. According to these Guidelines, general *démarches* are made when the Chinese legal and judicial systems are considered closed for public and international scrutiny and the death penalty might have been abused. For instance, EU concern about ‘strike hard’ campaigns has usually been raised through *démarches* towards Chinese counterparts within the framework of political dialogue meetings.¹⁸⁵ Specific *démarches* are carried out in individual cases which violate the UN minimum standards based on the sources provided by EU missions, delegations and international and local NGOs.¹⁸⁶ Following the death sentences of the Buddhist lama, Tenzin Delek Rinpoche and his assistant Lobsang Dhondup, fearing both would be soon executed, a *démarche* was immediately made before the Parliament had passed a resolution.¹⁸⁷

The strength of the use of *démarche* thus lies in the speed of the EU’s reaction. China’s signature of the ICCPR provides a legitimate basis for the EU’s normative action in a complementary manner with the work of NGOs and other institutions.¹⁸⁸ Nonetheless, compared to the dialogue approach, the use of *démarche* merely serves as a signal of concern rather than a push for China’s concession.

¹⁸⁴ Statement by Commissioner Christopher Patten in European Parliament Debate, *Moratorium on Death Penalty*, Strasbourg, 25 October, 2000.

¹⁸⁵ For instance, see *EU Annual Report on Human Rights (2001)*, the Council of European Union, p.43

¹⁸⁶ *Guidelines to EU policy towards third countries on the death penalty*, pp.2-3

¹⁸⁷ Parliament resolution on ‘Tibet, the case of Tenzin Delek Rinpoché, OJC 201 E, 18 August 2005.

¹⁸⁸ See *EIDHR Evaluation on the Abolition of Death Penalty Projects*, 2004, p. 31

4.3.2.3 Shaping Discourse

Manners (2002: 239) argues that normative power has the ability to shape discourses through learning, adaption or rejection of norms as a result of international norms and political learning by third countries. Forsberg (2009:17-18) suggests that Pace's (2007) case study on Israel's adoption of a Mediterranean identity serves an example of NPE 'shaping the discourse of what is normal'. In this section, I illustrate how three EU cooperation projects on the death penalty can be seen as this way of discursive rhetoric practice.

Project 1: 'Human Rights Network'

During the dialogue sessions, the EU had repeatedly urged China to ratify the ICCPR, and this concern had been materialised into a five-year project in 2002 – the EU-China Human Rights Network. Activities under this project involved organising conferences, training sessions, internships, exchanges and publications with Chinese academics for a period of three years in order to facilitate the ongoing EU-China Human Rights Dialogue.¹⁸⁹ Funded by the European Commission, it worked towards reducing the differences in the interpretation of basic concepts in international covenants between the EU and China.¹⁹⁰ Its partnership comprised of 15 European universities – one from each then EU member state, led by the Irish Centre for Human Rights; and 15 Chinese universities, led by the Chinese Academy of Social Sciences (CASS).¹⁹¹

Since the HR Network was responsible for organising EU-China legal seminars which ran in parallel with the human rights dialogue, its outcomes and recommendations were tailored to feed into the dialogue process and its legal seminars.¹⁹² Through organising many academic events between European and Chinese scholars, one of the provisions of the HR Network was to develop specialised legal literature in Chinese in the field of human rights. The issue of the death penalty was categorised under the heading of 'the ICCPR and domestic law', one of the seven prioritised themes. Given the strong expertise on the death penalty on the European side, the network resulted in the translation of *The*

¹⁸⁹ COM(2003)533 final, *ibid.*, p.14

¹⁹⁰ *National Indicative Programme 02-04*, the budget for the project named 'strengthening the defence of death penalty cases' under the category of 'Rule of Law and Good Governance' was €520,000

¹⁹¹ 'EU-China Human Rights Network', Irish Centre for Human Rights, available at <http://www.nuigalway.ie/sites/eu-china-humanrights/about/page0.php> [accessed 3 Mar. 2011]

¹⁹² *Ibid.*

Introduction to the International Criminal Court into Chinese as well as *The Abolition of the Death Penalty in International Law*.¹⁹³ However, on the Chinese side, the only paper produced by a Chinese scholar on the death penalty offered little more than a descriptive account on the differences between current international, EU and Chinese law with regard to ‘the rights to life’.¹⁹⁴ After the project ended in 2006, few academic activities followed up, despite a comprehensive network that had been developed between 2002 and 2006. Curiously, the website <www.eu-china-humanrights.org> which was built to provide detailed information about the network with full access to its activities and publications has already been removed.

Project 2: ‘Strengthening the Defence of Death Penalty Case in China’

The first cooperation project that specifically addresses the issue of the death penalty is entitled ‘Strengthening Defence in Death Penalty Cases’(2003-2006), targeting Chinese legal professionals, including defence lawyers, academics, judges, prosecutors, legislators, Ministry of Justice officials. It was an EIDHR project delivered by the Great Britain China Centre (GBCC) on behalf of the Commission’s Delegation in China.¹⁹⁵ With an overarching objective to reduce the use of the death penalty rather than abolition, the project worked towards enhancing the defence capacity of Chinese lawyers so as to ensure a higher success rate of appeals.¹⁹⁶ Chinese legal professionals were therefore invited to participate in training modules, workshops, professional networking, and research coordinated between the GBCC and the EC delegation in China.¹⁹⁷

It was noticed by the GBCC that the timing of the project coincided with a mounting disquiet amongst Chinese legal professionals and media that there were serious potential

¹⁹³ This premier monograph by William Schabas was translated by Huang Fang, a former intern at the Centre for the EU-China Network, at the Irish Centre for Human Rights, now a Professor in Law at the Chinese Academy of Social Sciences. This volume serves as the first comprehensive introduction on this subject in Chinese. The Irish Department of Foreign Affairs later funded William Schabas (2003) *The Abolition of the Death Penalty in International Law* to translated and published Chinese in 2007. Source of information available at http://www.nuigalway.ie/human_rights/Projects/eu_china.html [accessed 3 Mar.2011]

¹⁹⁴ Zhao, Xuegang (2004) ‘Rights to Life and the Controversy on Reservation/Abolition of Death Penalty’, working paper presented at *Dialogue Seminar: Ratification and Implementation of the ICCPR, and Right to Health*, The Hauge, 8-9 November 2004

¹⁹⁵ *EU Annual Report on Human Rights* (2003), p.113

¹⁹⁶ The Great Britain China Centre, ‘Death Penalty Reform’, Available at <http://www.gbcc.org.uk/death-penalty-reform.aspx#strengthdef>, [accessed 28 Jan. 2011]

¹⁹⁷ *Evaluation of EC Cooperation & Partnership with China*, Final Synthesis Report, Brussels, April 2007, pp.92-93

miscarriage of justice in the practice of capital punishment due to weak defence and disparities at the provincial level.¹⁹⁸ However, it was believed that an explicit focus on abolishing capital punishment, or even moratoria, would be too sensitive to get the project started in China, therefore the GBCC decided to focus its efforts on improving legal defence for those facing capital charges.¹⁹⁹

In order to avoid antagonising the Chinese authorities, the GBCC was reported to have assured the Chinese government that this project would not be used as a means to gather information for other purposes. However, it was later revealed that some empirical data from this project has been referred to in one of the HR dialogues under the UK presidency. Nevertheless, the GBCC had enjoyed good relations with the Chinese government throughout this project which was the key to its overall success.²⁰⁰

Project 3: 'moving the debate forward: China's use of the Death Penalty'

In the second half of the UK presidency in 2006, another project entitled 'Moving the Debate Forward: China's Use of the Death Penalty 2007-2009' was a follow-up of the previous project which was also implemented by the GBCC.²⁰¹ Given that one of the essential barriers cited by the Chinese authorities against the use of that death penalty is public opinion, this EIDHR project (Jan. 2007 – Oct. 2009) thus seeks better understanding of the Chinese public opinion, meanwhile, influencing or shaping the Chinese public debates. The project included 30 activities with more than 4000 individual Chinese participants in a two-year partnership with Beijing Normal University and Wuhan University.²⁰² The research survey on Chinese criminal justice professionals and public opinion was led by Dietrich Oberwittler of Max Planck Institute and Qi Shenghui of Wuhan University with Professor Rodger Hood as the project consultant. Contrary to the Chinese authorities' argument, the findings from these surveys suggest that the public and the legal professionals do not seem to have profound and rigid commitment to the use of capital punishment in China (Hood 2009: 2). Moreover, many legal academics believe that

¹⁹⁸ Ibid., p.76

¹⁹⁹ Ibid., p.46

²⁰⁰ Ibid., p.93

²⁰¹ Ibid., p.92

²⁰² The Great Britain China Centre (GBCC), 'Death Penalty Reform', available at <http://www.gbcc.org.uk/death-penalty-reform.aspx#strengthdef> [accessed 28 Jan. 2011]

capital punishment for non-violent crimes should be abolished. The surveys also revealed that most members of the public knew very little about international norms and treaties (Hood 2009: 3).

Following this survey, an International Research Centre on the Death Penalty in China was set up, and a new website designed to provide educational material on the death penalty was set up at the end of the project in 2009.²⁰³ Moreover, the research data gathered by these two successive projects not only contributes to the ongoing debates in the EU-China human rights dialogue, but also provides an original contribution to the study of capital punishment on Chinese public opinion, feeding into the global discourse on abolition.²⁰⁴ Especially the second project, in one of the leading academics' own words, is 'the first scientifically reliable and valid evidence of the state of opinion on the death penalty in China' (Hood 2009: 2).

Crucial to the smooth if not successful implementation of the last two projects is the indirect approach in which the GBCC avoided all mentioning of abolition or moratorium, and instead, pragmatically focused on enhancing the knowledge and capability of defence lawyers or lobbying through legal research as the 'way in' when direct lobbying was not appropriate in the Chinese context.²⁰⁵

4.3.2.4 Living by Example/Emulation

As the only norm diffusion model that works without policy action, 'living by example' is considered one of the most important elements of normative power, given that NPE is about what the EU is, rather than what it does (Manners 2002, 2006c, 2008). Forsberg (2009: 18) suggests that the attraction of normative power implies a positive sense of learning. In this section, I briefly look at the extent to which the Chinese criminal law

²⁰³ The website www.death-penalty.cn was launched in October 2009, disseminating the research result of the project. However, the access to the website has been denied, presumably centred by the Chinese government since September 2010.

²⁰⁴ The empirical data from the first project (2003-6) has been used as background in one of the human rights dialogue under the UK presidency, according to *Evaluation of EC Cooperation & Partnership with China*, April 2007, p.93. Publications from Research Survey (2007-9) of the second project on include: An 'Introduction', by Rodger Hood, Oxford University; 'Survey of Legal Professionals', by Wuhan University; 'Survey of Public Opinion' and 'Comparative Survey', by Dietrich Oberwittler, Qi Shenghui.

²⁰⁵ EIDHR Evaluation on the Abolition of Death Penalty Projects(2007), p. 86

system has emulated from the European experience, and what the current perceptions are in the mind of the Chinese thinkers.

At the official level, the Chinese authorities rarely openly admitted their admiration towards European legal models, although the People's Republic had adopted much of the European experience in law-making during its modernisation process. Following the death of Mao, the Criminal Procedure Law of 1979, which was considered the first attempt to end the arbitrary punishment and widespread abuse, drew largely on the European civil law inquisitorial system which also influenced earlier Chinese Republic lawmaking between 1917 and 1949 (Chu 2000). According to Chu (2000), this Criminal Procedure Law was essentially a mixture the civil law inquisitorial system of continental Europe incorporated with elements of Marxism and Leninism to be used as 'a tool of the proletarian dictatorship designed to protect the people from enemies of the Communist Party'.

Even with regard to the death penalty on which the European position has been widely seen as unequivocal and transparent, it still became the target of Chinese criticism of hypocrisy or double standards during the dialogue approach on European public opinions in some part of the continent and the danger of reintroduction of death penalty in some Member States' democratic processes, notably during the French presidential election in 2002 (Svensson 2001, Yorke 2008).²⁰⁶ Kjaerum (2000:6) recalls a few sessions of human rights dialogue and legal seminars in which China's death penalty practice had been scrutinised, not just with regard to the prospective abolishment in China, but also how to avoid the reintroduction of the death penalty in European legislation in an equal manner.

Among Chinese academic debate, the first abolitionist voice openly emerged in 2000 during a conference held at Beijing University entitled 'the morality of the death penalty'. Qiu Xinglong, a prominent law professor, drew from European discourse on capital punishment and humanistic tradition, and argued that 'China is still waiting for its Beccaria'.²⁰⁷ Despite being considered a radical thinker, Qiu was pessimistic about China's prospect of following the footsteps of Europe towards abolition. In his view, abolishing the death penalty in Europe would not have been possible without the 'Christian undercurrent'

²⁰⁶ Jean-Marie Le Pen famously advocated the death penalty in two consecutive presidential elections in 2002 and 2007.

²⁰⁷ See Qiu, Xinglong, 'Sixing de dexing' (The Morality of the Death Penalty), cited in Zhang, N. (2005a: 3)

in the past²⁰⁸. Qiu further drew on European Enlightenment thinkers who had developed Christian beliefs into Western philosophical system on the relationship between the individual and the state, which inspired the ideal of abolishing capital punishment.²⁰⁹ While a humanistic tradition is yet to flourish in contemporary China, the legacy of Mao and the five decades of Communist rule left a ‘vacuum’ in Chinese belief system following the defeat of communist ideology in 1989.²¹⁰

In contrast with Qiu, Chen Xingliang, a professor at Peking University questioned whether Europe in Beccaria’s time was necessarily more civilised than China today (Zhang 2005a, 2005b). While standing by the principle of the abolitionist ideal, Chen considered it impracticable in China’s current situation. Chen mentioned that Europe had abolished inhuman treatment such as torture long before the death penalty had been outlawed (Chen 2002, cited in Zhang 2005a), whereas contemporary China remained a developing country in which capital punishment is still regarded as an economical and efficient means to rule by the leadership. Therefore, what is at stake now is the restraint of its practice rather than abolition. For Chen, there will be a progressive humanisation of the law for China to realise the abolitionist ideal, however long it should take.²¹¹

It is not clear the extent to which these views of Chinese leading law experts are driven by the ‘power of attraction’ of Europe. One of central premises of the NPE is that the EU’s principles are sufficiently attractive that others would emulate them (Manners 2009a: 3; Aggestam 2009: 49). However, due to the particular sensitivity surrounding this topic in China, it is not only intellectually painful but often physically dangerous for Chinese thinkers to openly comment on foreign thinkers whose names were not included in the CCP’s official discourse. Svensson’s work (2002) looks into Chinese discourse on human rights throughout the twentieth century. She concludes that Chinese thinkers were driven to foreign thinkers for wisdom by the urgent need of their own society, and for guidance on how to face some of the most difficult problems of modern politics. Therefore, she believes that those who translated and studied Western thinkers’ had developed their own ideas

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Cheng, Xingliang, ‘Opinions on Retention versus Abolition of the Death Penalty’, in Zhang, N. (ed.) (2005b: 4)

based on issues they perceived in China. Hence, she opposes the ‘diffusion’ model, and instead, argues that human rights arguments are generated from within China by the intrinsic need of its own people. Therefore, ‘the power of attraction’ argument as applied to this case is not well supported.

4.3.2.5 Shaming

Manners (2009a:12) broadly defines shaming as public condemnation or the use of symbolic sanctioning. Foot (2001:9) suggests that shaming is bound up in a sense of belonging to a normative community of states, thus, it is a matter of being an insider or outsider. In the case of China, raising the issue at international fora by the EU is a classic example of shaming.

Before 1998, China had not entered any international agreement regarding human rights; the UN’s Geneva Human Rights Commission became the only international platform in which the situation in China could be raised (Kent 1995: 18). One of the most embarrassing experiences for Beijing was in 1997 when it was criticised at the UNCHR for selling executed prisoner’s organs without their consent, and even timing their executions to accommodate the need for organs (Copper and Lee 1997: 182, quoted in Wachman 2001: 267). The Chinese People’s Liberation Army had been allegedly involved in supplying organs to meet the foreign demand.²¹²

Since mid-1990s, China had started to urge Western countries to engage in bilateral monitoring mechanisms on the issue of human rights (Kent 1995, 1999; HRIC 1998). By the late 1990s, China had managed ‘to divert the international community into an increasing number of bilateral channels’ so as to avoid ‘potentially humiliating experience of a resolution critical of China in the UNCHR’ (Kent 2001: 583-584).

Between 1989 and 1996, Member States of the EU co-sponsored a resolution each year deploring the human rights situation in China, including the issue of the death penalty. Despite a strong objection from the European Parliament, the General Council announced its abandonment of the resolution and listed a number of improvements to justify its

²¹² Bull. EU 6-1998, point 1.1.5, Parliament resolution on the sale of organs of persons sentenced to death in China, OJ C 167, 1.6.1998

change of strategy, one of which was China's commitment not to introduce the death penalty in Hong Kong and would report on the implementation of UN Covenants in Hong Kong. As a result, only Denmark and the Netherlands maintained a strong position on China at the UNCHR in 1997. However, apart from some diplomatic arrangements being postponed, both countries did not suffer from commercial retaliation from Beijing (HRIC 1998: 29-30). This bilateral dialogue 'coupled with specific cooperation projects' was subsequently described by the Commission as 'the most appropriate means of contributing to human rights in China.'²¹³

According to Foot (2001: 10), 'in the absence of direct material costs, disapproval matters only to states that are concerned about reputation, [and] are capable of being shamed'. For Risse and Sikkink (1998: 15), evoking a sense of shame depends on the norm-violating state's 'moral consciousness' and the need to belong to the 'civilised community'. However, Chinese authorities openly denounced that the abolition is a global trend by citing the U.S as the lead example of retentionist states, and justified its practice based on cultural relativists and 'stage of development' arguments. As Wachman (2001: 260) argues, although China had suffered from loss of reputation on human rights ever since the 1989 Tiananmen events, the international efforts to shame China resulted mainly in resentment and defiance.

4.3.2.6 Deontological Ethics

Deontological ethicists argue that the character of action itself should be subjected to moral judgement (O'Neil 2000, in Manners 2008:57). Drawn from the Kantian view of public reasoning, it is believed that good values are established through practice of reasoning and law-making. Therefore, for deontological ethics, it is the action, not the outcome, that matters in terms of making moral judgements. Furthermore, deontological ethics has the advantage of cross-cultural moral intuitions and reasoning compared to consequentialist and virtue ethics (Alexander and Moore 2008). Linking the concept of NPE to normative ethics, Manners (2008: 57) suggests that the EU should focus on the rationalisation of responsibilities and rules which guide its external actions. For Lerch and Schwellnus (2006: 317), the EU's abolitionist policy is vested with great legitimacy, because it 'was adopted for normative reasons, pursued with argumentative means and justified coherently'.

²¹³ COM(1998)181 final, *ibid.*

However, Laidi (2008b: 3) reminds us that how EU norms are diffused is linked to the degree of Europe's engagement in promoting them, the coherence of European preferences and the challenges the EU faces.

The central hypothesis in this section is that the EU's policy in China on the use of the death penalty is based on reasoning of legitimated human rights standards enshrined in international law, which are diffused through the process of persuasion and engagement. This empirical investigation suggests that persuasion and shaping discourse are most readily associated with deontological ethics. In both cases, the legitimated principles were established before or during the process of reasoning. However, rather than promoting abolition, both cases ended up using minimum standards embedded in international human rights law which do not prohibit the death penalty, but only strive to enhance justice in the actual trial process, with its basic concepts subjected to national interpretations. The dilemma thus lies between engagement and persuasion. While the EU standing by its principle would provoke defiance from the Chinese side and risk undermining the engagement; allowing both sides to exchange their views – especially between liberal universalists and cultural relativists - might jeopardize the legitimacy of universal human rights norms. Furthermore, although invoking norms and shaming are essentially forms of persuasion, the legitimated principles upon which EU action is based were not established bilaterally between the two sides, hence, they are less normative according to deontological ethics. Finally, living by example is least associated with deontological ethics, due the absence of EU action or reasoning process.

4.3.3 Normative Impact

The January 2001 Council Conclusion defines the detailed benchmarks on the dialogue process through which the EU would be seeking to make progress with China. The one that concerns the death penalty reads:

*'Compliance with ECOSOC guarantees for the protection of those sentenced to death and restriction of the cases in which the death penalty can be imposed; provision of statistics on the use of the death penalty'*²¹⁴

Moreover, the EU's Annual Reports on Human Rights set out a separate section

²¹⁴ General Affairs Council, 2327th Council meeting, 22-23 January 2001, Brussels.

documenting the death sentences and execution worldwide every year. The source of data is exclusively relying on Amnesty International's death penalty logs²¹⁵, which indicates that China's execution rate has consistently gone down since 2001 when the last national 'Strike Hard' campaign took place. In 2003, the Council welcomed China's announcement of a series of legal reforms relating to capital punishment.²¹⁶

From a positivist/legal perspective, China's compliance with ECOSOC guarantees, statistical evidence on the use of death penalty and legal reforms are considered by EU policy makers and NGOs as barometers to assess the impact of EU foreign policy (HRIC 2004:4). However, there are a number of problems with these standards. First of all, Hood and Hoyle (2008: 98) argue that the Chinese penal system, which is not transparent and openly accountable, is difficult to assess or to change. Therefore, it is impossible to judge objectively how EU policy is affecting the number of death sentences and executions carried out, as no official data have been published or obtained by the EU through its repeated requests during the human rights dialogue.²¹⁷ Furthermore, Kent (2001:143) suggests that bilateral monitoring of human rights produced at most 'temporary, superficial and instrumental change', it did not lead to deep-rooted internalisation of human rights norms, evidenced by China's 'continued excessive use of the death penalty' and other human rights violations.

From an interpretivist perspective, 'Europe's attainment is normative rather than empirical' (Rosecrance 1998, cited in Manners 2002: 238). To further this interpretive and normative understanding of effectiveness, I aim to identify the ideational impact of NPE on China's perception of normality on the death penalty as indicated in its legal reforms and rhetoric change, and evaluate such impact through a consequentialist understanding of effectiveness. While asking how and why we ought to judge the EU's impact through NPE, I explore the causality between normative action and impact in an attempt to identify the net impact of EU action. This analysis draws on a combination of official sources, media accounts, NGO

²¹⁵ The data gathered by AI are based on Chinese media reports on sentences and executions at local level across the country. Lu and Miethie (2005:2) argued that this source offers at best a snapshot of selective aspects of the death penalty in China.

²¹⁶ Presidency-in-Office of the Council of the European Union, Portugal (2007), Press release of the 24th Round of the EU-China Dialogue on Human Rights, Lisbon, available at http://www.eu2007.pt/UE/vEN/Noticias_Documentos/20071017UEChina.htm. [accessed 1 Feb. 2011]

²¹⁷ COM(2003)533 final. Ibid., p.13

perspectives and secondary literature.

4.3.3.1 Legal and judicial reform

In order to ensure more uniformity in the imposition of the death penalty, and to reduce its scope of application only to the most serious crimes, the Supreme People's Court decided in 2004 that it would in future review all death penalty cases itself.²¹⁸ This policy change implies that China returned to its legal position prior to 1983, when the power of the Supreme People's Court was devolved to the provincial High Courts (Hood and Hoyle 2008: 101). The new review system came into effect on 1 January 2007, with an order that execution should only apply for 'an extremely small number of serious offenders' and that the death penalty should not be imposed in certain cases of crimes of passion, associated with family disputes, and economic crimes.²¹⁹ Chief Justice Xiao Yang, President of the Supreme People's Court, added that: as 'few executions as possible should be carried out and as cautiously as possible, in order to avoid wrongful executions'.²²⁰ The former president of the Supreme People's Court, Xiao Yang²²¹ who lobbied for the 2007 review, suggested that the death penalty should only be used on 'extremely vile criminals' and the review would contribute to preventing wrongful convictions.²²²

The EU regarded this reform as a concrete improvement, and issued a statement on 17th October at the end of the 24th round of human rights dialogue that:

*'The EU welcomed the reduction in the number of executions in China following the review of death sentences by the People's Supreme Court'*²²³.

European Commissioner for External Relations, Benita Ferrero-Waldner also recognised this progress and stated that:

²¹⁸ *China Daily*, 'Revision of death penalty system urged', *Xinhua News Agency*, 26 December 2004.

²¹⁹ *BBC News*, 'China to reduce death penalty use', 14 September 2007.

²²⁰ *Ibid.*

²²¹ A different person who shares the same name as the aforementioned 'Chief Justice'.

²²² *The Washington Post*, 'China's Capital Cases still Secret, Arbitrary', 24 December 2008

²²³ Presidency-in-Office of the Council of the European Union, Portugal (2007), Press release of the 24th Round of the EU-China Dialogue on Human Rights, Lisbon

'We understand that the result is a reduction in the number of effective death sentences and executions. This is particularly gratifying for the EU, as it has long been a priority area of intervention'.²²⁴

In the absence of public statistics from before and after the 1st of January 2007, it was impossible to verify whether death penalty verdicts and executions had actually dropped. As long as there is no access to transparent statistics, the EU should refrain from welcoming a drop of executions. Such statements are not only short in clarity on the extent of the assumed policy achievement, but also self-contradictory given that the Chinese delegation has repeatedly rejected EU requests for the publication of statistics during the human rights dialogue sessions.²²⁵

This is not to say that the absence of credible statistics means that the EU has had no impact on China's legal reform. According to an EIDHR evaluation on the impact of the Human Rights Network, the results from a focus group discussion showed that the participants of the Network, who represented the leading expertise in human rights in China, believed their participation in the Network has had significant direct and indirect impact on legislative reform for the protection of human rights. They specifically linked their participation in the Network with their experience in drafting legal reforms regarding the expansion of the judiciary, reforms which gave the state's Supreme Court the right to review death penalty cases to ensure that the ultimate punishment law is well implemented.²²⁶

In recent years, Chinese media, including Chinese official media Xinhua, have increasingly exposed cases of errors in administering the death penalty, and criticised provincial courts for the lack of carefulness in processing capital punishment. In a news report in 2006, Xinhua started to 'hint at death penalty reform'.²²⁷ Information revealed by the Supreme People's Court (SPC) to Xinhua indicated that the SPC had been considering withdrawing

²²⁴ Benita Ferrero-Waldner's speech on 'The EU-China Human Rights Dialogue' in European Parliament, Strasbourg, 12 December 2007, SPEECH/07/817.

²²⁵ COM(2003)533 final, Brussels, 10 September 2003. p.13

²²⁶ Result of Focus Group Discussion and CSO Roundtable, included as annex 8 in *Evaluation of EC Cooperation and Partnership with China*, Final Synthesis Report, Vol.2, p.60

²²⁷ 'China hints at death penalty reform', *Xinhua News Agency*, 10 March 2005

provincial courts the right to ratify the death penalty since the late 1990s.²²⁸ This was also the time when the EU pressed China to ensure that all appeals are heard by the SPC at the start of its first human rights dialogue session.²²⁹

Professor Zhou Guangquan at Tsinghua University, member of the Legal Committee of the National People's Congress, recently revealed a proposal to reduce execution numbers for non-violent crimes. Responding to this sensitive topic, Zhou indicated the impact of abolitionist norm on China's death penalty reform, and implicitly acknowledged the authorities' awareness of the global significance of the abolitionist movement:²³⁰

“This is to a certain degree a response to foreign concerns about the issue of capital punishment in China. [...] In a nutshell, only a minority of countries retain the death penalty and an extremely small minority actually carry out executions.”

An overseas Chinese dissident and prominent academic Zhang Lijia commented on the 2007 reform reflected that:

*‘Top Chinese leaders feel uncomfortable with the accusation that China applies capital punishment too readily, partly because the international community has pressured China persistently, reforming capital punishment has been made a priority within the Party-run judiciary system.’*²³¹

Moreover, following many years of exposure to international pressure, including that of the EU both bilaterally and multilaterally²³², the Chinese authorities had finally acknowledged in August 2009 that around 65 per cent of transplant organs were taken from executed prisoners. The Vice-Health Minister allegedly said in the Chinese official media that:

“Condemned prisoners were definitely not a morally appropriate source for

²²⁸ ‘China changes law to limit death penalty’, Xinhua News Agency, 31 October 2006.

²²⁹ See EU Annual Report on Human Rights (1998/9), p. 20

²³⁰ *The Southern Weekend* interview with Zhou Guangquan, member of the legal Committee of the National People's Congress and Tsinghua University professor, in ‘Translation&Commentary: “Greater Steps Can be Taken to Reduce the Death Penalty”’, *Duihua Human Rights Journal*, the Dui Hua Foundation, 1 September 2010.

²³¹ Interview with *the China Beat Blog*, in response to the speech on China's achievement in the area of human rights by the director of the State Council Information Office. 9 December 2008

²³² See EU 6-1997, point 1.1.5, OJ C 167, 1.6.1998

organ transplants".²³³

Nevertheless, the execution of Wo Weihan underlines the state secrecy, lack of transparency and uneven application of the law that continue to prevail in China's death penalty practice since it had embarked on a seemingly drastic reform in criminal justice in 2007.

While demonstrating that Western criticisms do seem to play a significant role in shaping China's rhetoric and policy action on the issue of the death penalty, the extent to which these changes are the direct result of the external pressure is hard to gauge, so is the power of the abolitionist norm in influencing the mindset of the Chinese authorities. In the broader Chinese domestic context, cognitive impact resulted from self-reflection upon China's contemporary history, especially concerning the Cultural Revolution on behalf of the Chinese officials, is considered an important internal driving force behind the Chinese domestic change in attitude toward rule of law since the early 1980s (Peerenboom 2007: 201).

As opposed to an NPE diffusion model, one might ask to what extent this increasing awareness and consciousness by the Chinese officials shown in these reforms actually are generated from within the Party or indeed the Chinese society. The GBCC noticed the coincidence between the timing of the 2003-6 EIDHR project and an increasing disquiet within China that there were serious problems of miscarriages of justice in the practice of the death penalty.²³⁴ Thus, Godement (2008: 74) argues that the 2007 review has been 'a largely domestic process resulting from mounting criticism of capital punishment by the educated elite'. If this is the case, the EU's direct impact on China's change of death penalty stance and penal system is weaker than previously expected. However, such domestic incentives could eventually evolve into a major public discourse for abolition within China. To that end, it could potentially prove the validity of an abolitionist stance as a universal norm, in the sense that it has sprung up virtually everywhere because of its widespread application to the modern condition. Either way, cooperation with the EU on the death penalty has provided expertise, experience, normative and rights arguments which had pushed for a change of policy preferences by the Chinese government.

²³³ Amnesty International Report on the Death Sentence and Executions in 2009, p. 13

²³⁴ EIDHR Evaluation on the Abolition of Death Penalty Projects, p.20

4.3.3.2 Chinese rhetoric change

Both the Chinese officials and academics have made considerable rhetorical changes concerning death penalty practice. Before the late 1990s, Chinese discourse on human rights was still unanimously against abolition based on cultural, deterrence and developmentalist arguments. Today, these arguments are still prominent in both official and academic discussions, however the balance has shifted over the years as there is an emerging rights consciousness and maturity in understanding legal principles and ideas increasingly evolving into domestic pressure for reform and even abolition (Macbean 2008: 206-207).

To prove the causal connections between China's rhetoric change and a relatively small number of Chinese scholars and academics receiving lectures, attending conferences or participating in training and academic exchanges between 1998 and 2009 is impossible. Even tangible results such as legal reforms as discussed in the previous section are products of a complex dynamics of international and domestic dimensions with various variables involved amongst various institutions.

Thus, I intend to identify normative/moral and human rights arguments embedded in Chinese official and academic discourse since the late 1990s. As I demonstrate earlier in *section one*, China remains under no international legal obligation to comment on its use of death penalty and the vague formulation of basic concepts in international human rights instruments allows China to adopt alternative interpretations. Hence, the EU's prominent normative position, although set within the framework of international law, is most likely to facilitate the emergence of normative/moral arguments for the abolition in China. Furthermore, the influence of the US as another norm entrepreneur in this case is virtually non-existence, given its own record in the death penalty practice which is often cited by the Chinese authorities to denounce the legitimacy of the abolitionist norm.

Although in both academic and official discourse, advocating abolition is still considered the voice of the minority, the majority of arguments against abolition are based on cultural relativist, developmentalist and crime deterrence views. At the fourth session in March 2007, the most recent abolitionist statement on China's official position was made by Mr La Yifan at the UN Human Rights Council. Mr La stated that:

*'China was a country with a rule of law, where the death penalty only applied to the worst crimes, and this was in agreement with the ICCPR. The death penalty's scope of application was to be reviewed shortly, and it was expected that this scope would be reduced, with the final aim of abolishment.'*²³⁵

The first part of this statement justifies China's current practice of the death penalty by reference to rule of law and international human rights law. Although the second half does not explain why the 'final aim' is abolition, this potential move towards abandoning the practice can either be driven by 'moral consciousness' or influenced by the global abolitionist trend.

Hood and Hoyle (2008: 100) notice that there had been a visible change in the discourse, evidenced by the willingness of the Chinese authorities to discuss the death penalty in human rights seminars and dialogues with the EU. One of the major progresses in terms of shaping Chinese discourse is reflected in the publication of *The Road to Abolition*, in which former retentionist scholars such as Zhao Bingzhi, a regular participant in the EU-China human rights dialogue and legal seminars, edited this book of essays on abolition of the death penalty for economic crimes (Zhao 2004).

In academic discussion, the first openly abolitionist voice came from Professor Qiu Xinglong who argued that:

*'As long as the law recognised that criminals were humans, the criminals were entitled to live and the state and the law could not deprive them of their right to life.'*²³⁶

Qiu also found that most countries appear to support abolition because in this respect they see themselves sharing many of the European Enlightenment values including human rights. Furthermore, the positive influence of Catholicism is felt across the region in the sense of a respect for human life.²³⁷ European stance on the death penalty has certainly captured the imagination of Chinese legal scholars like Qiu who seek to understand the cultural and

²³⁵ Human Rights Committee, 'Human Rights Council Opens Fourth Session', HRC/07/3, 12 March 2007, p.9

²³⁶ 'China Questions Death Penalty', *Xinhua News Agency*, 27 January 2007

²³⁷ See Qiu Xinglong, 'Sixing de dexing' (The morality of the death penalty), cited in Zhang, Ning (2005) 'The Debate over the Death Penalty in Today's China', *China Perspectives*, No. 62, Nov-Dec. 2005, p.3

historical lessons that the success of the European abolitionist movement holds for China. However, Qiu did not call for an immediate abolition, as he believed that:

‘Judging by the specific state of affairs of today’s China, it is impossible to have capital punishment abolished in China in the near future ... What China at this moment can do is to adopt a policy of “limiting [the kinds of crime to be punishable by the] death penalty”; this is a totally feasible target’. (Qiu 2001: 97)

Chinese scholars’ views, particularly those of social scientists, are generally not transformed directly and immediately into public policies. They nevertheless provide an important source of knowledge for the general public and may serve as a catalyst for social and policy changes in the long run (Lu and Miethe 2007: 21). In eighteenth-century Europe, when public opinion was overwhelmingly in favour of the death penalty, Italian scholar Beccaria in his 1764 publication ‘on Crimes and Punishment’, similarly, the European influence can at best be identified in debates among a very small number of Chinese academics.

4.3.3.3 Consequentialist Ethics

Consequentialist ethics drawn on the utilitarianism of Jeremy Bentham and John Stuart Mill suggests that normative ethics should be based on the outcomes of actions. Thus, the right consequences are measured according to the principles found in the target society, rather than the merits of those who deliver the action (Manners 2008: 58). In this sense, the impact of EU human rights policy on the death penalty should be judged by the general rules and principles found in Chinese society, rather than EU’s own principles. One of the prime justifications I establish in *section two* for not abolishing the death penalty in China, according to the authorities, is the belief that it enjoys wide support from the general public. If its scope of application is reduced or the practice is abolished, it would be against the Chinese public opinion and cultural values, and provoke the fear for the lack of public security.

The first and foremost problem associated with this normative theorising lies in the myth of whether the Chinese public does have a deep seated belief in the morality and utility of death penalty practice. Since there has been little academic research studying the

deterrence effect of the death penalty in Chinese society due to its political sensitivity, the European Commission funded a legal research project to mount an empirical account to verify the claim of the overwhelming public support for the death penalty. The results show that the public did not have strong moral opinions on the for-and-against debate on the death penalty, nor were the public aware of the international trend of abolition (Hood 2009: 2). Therefore, it seems that we are left without a basis for judging the NPE through normative ethics.

Secondly, if an informed public opinion is not possible to identify, in theory the statistics regarding the death sentences and executions should be an indicator based on the general welfare of the society. This option is automatically ruled out, given that credible statistics are not available in China.

Nevertheless, I argue that the impact of the project ‘strengthening the defence capability of lawyers’ could be both normatively effective and also meet the requirement of consequentialist ethics. This project started when there was an unprecedented and growing amount of criticism, first from academic and legal circles and then even the official media, towards the cases of the death penalty being wrongly administered at provincial level, which eventually led to the legal reform in 1997. The target group of this project were defence lawyers involved in the death penalty cases, training these lawyers would presumably improve their defence skills, thus reducing the risks of miscarriage of justice which was perceived in the interests of the Chinese society.

4.4 Conclusion

This chapter applies a NPE framework as an alternative view in understanding the EU’s foreign policy on the death penalty. It implements this framework by analysing the Chinese case through the three stages of norms formulation, normative action and normative impact. Through cultural immersion and exploring the legal background of the subject, I seek to understand the origins of the EU’s ambition to abolish the death penalty internationally in relation to the whole set of moral, philosophical and legal concepts, and foreign policy practice in which this global ambition is embedded. With regard to China, I intend to present summaries of cultural, historical and legal context within which China as a special case in both the world of capital punishment and EU foreign policy agenda can be

comprehended and interpreted.

With this interpretivist epistemology in mind, I first present a review of major arguments and perspectives in the current study of international law with regard to the death penalty. Through this summary, I establish that an NPE perspective implies the adoption of a human rights approach against the death penalty with its legitimate basis found in international law, as well as a normative view as to why it should be abolished by rejecting the validity of a utilitarian view against the abolition stance. I then conclude that although abolition of the death penalty has yet to become a binding norm in international law, its legitimacy lies in its normative justification.

I then proceed to analyse the contradictions in Chinese official justifications of its death penalty practice in order to establish a normative basis for the application of NPE in a cross-cultural context. Although norm contestation is much anticipated in the Chinese case due to the divergence in legal and political culture between the two sides, I indicate that normative arguments could potentially become more persuasive than rights arguments.

In the first stage of the tri-partite analysis, I argue that that the EU position is unequivocal and transparent, therefore unlikely to be subject to accusation of hypocrisy or double standards. The EU's response to and dealing with the human rights violations in China thus shed light on its own self-perception, and it sustained itself through consolidating the EU's normative identity. Manners proclaims (2002: 239) that normative power is 'power of an ideational nature characterised by common principles and a willingness to disregard Westphalian conventions.' On that note, the willingness of EU member states to achieve abolition at the cost of their sovereignty makes this case of capital punishment a prime example of NPE. At this stage, virtue ethics sits well with NPE in ways in which we understand the dynamics between internal and external practices, and the universalist disposition of the norm it stands for.

In the second stage of analysis, I present a set of procedures for describing and explaining five different forms of norm diffusion mechanisms. Each model of diffusion contains descriptions, causal questions and alternative explanations to evaluate the hypothesis for normative action. Although almost all empirical evidence on normative action in this case

study belongs to certain norm diffusion models, the evaluation through deontological ethics revealed significant discrepancies between the requirements of normative action through NPE perspective, and standards for morally acceptable action based on deontological ethics.

In the final section, I demonstrate the ontological difference between the conception of impact from a positivist and a normative perspective. However, I am not able to establish causal links between EU action and China's tangible legal reform, nor could I define ideational impact among diverse views held by Chinese officials from different institutions talking to different audiences. Nevertheless, the EU influence on intellectual enlightenment in China on the death penalty seems easy to identify, yet it remains difficult to demonstrate the impact of individual intellectuals' views on the official agenda. Similarly, consequentialist ethics seems to invoke questions that cannot be answered. Moreover, even the universalist premise of minimum standards in international law is challenged through this way of ethical thinking, in circumstances where the principles of the Chinese society seem remotely related with the international law.

In this chapter, I conclude that the EU's normative power depends on whether it has successfully persuaded China of the universality of the abolitionist norm. To that end, I argue there is a considerable degree of contestation in perceiving the abolition of the death penalty as an international human rights norm by the Chinese. Therefore, this investigation is unable to establish a legitimate basis for assessing normative power and normative justification in case of China within the given analytical timeframe (1989-2009). However, it does not mean a cultural relativist view is considered valid, either. Although this chapter demonstrates the European origin of the death penalty norm, it also recognises its universality based on well-established literature. Therefore, my point of departure in the chapter is to adopt a human rights approach to the death penalty which is often considered invalid outside the European dominion, as in this case, China. However, despite Chinese peculiarities in its history and culture, I have found evidence and emerging arguments in academic and public discussion that indicate the future of introducing an abolitionist policy in China is not entirely impossible, albeit a long way to go. To that end, European states arrived at a universally applicable standard first, but that does not make this norm 'Eurocentric'.

Chapter Five

The Tibet Question

Introduction

In the past two decades, the human rights situation in Tibet²³⁸ has gained widespread currency within the international community. In this context, the EU is either seen as a sympathetic outsider who at times reflects popular moral sentiment in the West, or an imperialist intruder in the eyes of the Chinese.²³⁹ A cursory glance at EU-China relations would reveal that periods of tension tend to correspond with the publicity of human rights abuses in Tibet or the 14th Dalai Lama's European tours.

Amongst those who have studied EU-China relations, there seems to be little unanimity on the influence of the Tibet issue on the EU's China policy (Balme 2008b; Cabestan 2010). However, surprisingly few have engaged with the Tibet question at breadth, which poses a stark contrast with the attention given by the Western media and civil societies. This neglect in the literature, according to Anand (2002:4), reflects the strategic interests of major Western powers, IR's focus on relations between states and ethnocentrism of the IR discipline. So far, legal and historical scholarship within which the Tibet question is widely studied has established little consensus on the nature of the Tibet question in relation to international norms. Nevertheless, it constitutes an important source which can be used to demystify the frustration and discrepancy between the EU and China in understanding this issue.

²³⁸ Depending on the actual context, the term 'Tibet' in this chapter refers to either Tibetan Autonomous Region (TAR) - a view from the People's Republic of China, or 'Greater Tibet' which includes TAR, Qinghai province, Tibetans areas of Sichuan and Yunnan province – a view adopted by Tibetan Government in Exile (TGIE) and international Tibet support group.

²³⁹ For instance, see 'Tell you a true Tibet – Origins of so-called "Tibetan Independence"', *Xinhua News Agency*, 26 April 2008.

The scope of this chapter is about the normative power of the EU on the issue of Tibet. Following on from the previous case-study on the death penalty, the theoretical claim of NPE is further extended with an empirical analysis of Tibet as a sticking point reflecting upon the uneasy relationship between the EU's human rights concerns on Tibet and the implementation of CFSP towards China; between the EU's normative and materialistic concerns; and between norms of international law and the political reality of China's powerful presence, all of which touch fundamental questions about the organising principles of international society.

Unlike the previous case study, the first section is devoted to examining the relevant historical and political issues rather than international legal perspective. This is justified two-fold. Firstly, it is to enable the later discussion of international law to be based on factual position summarised in *section one*. Secondly, it highlights the complexity of this issue in historical and political aspects with a particular reference to the role played by the West. In *section two*, I identify the scope of norms involved in the paradigms to which the EU and China have subscribed. In so doing, I ask why the international mechanism as part of the UN has failed to address the Tibet question; and to what extent it was influenced by China's relations with the West, and how the West's policy, and the EU in particular, is expected to be empowered and constrained by adopting international human rights discourse and legal standards to the issue of Tibet. In *section three* as the centrepiece of the chapter, I apply the NPE framework to the Tibetan case. I first look at the principles and issues surrounding minority rights and the right of self-determination in framing EU foreign policy regarding Tibet, and how they had been applied by the EU in its own back garden. I then move on to illustrate the ways in which EU normative power is diffused and how impacts should be judged.

5.1 The Tibet Question: issues and controversies

In international politics, the Tibet question is regarded as the question of what should be the historical and political status of Tibet vis-à-vis China (Goldstein 2004: 186, Anand 2006: 287). For the Chinese government, the 'so-called "Tibet question"' is provoked only by forces external to China, and it manifests continuing support by Western countries for

Tibetan separatists.²⁴⁰ For the Dalai Lama, on the other hand, “it is an issue of colonial rule: the repression of Tibet by the PRC and the resistance to that rule by the people of Tibet.”²⁴¹

On the official level, all European governments acknowledge that Tibet is part of China and no country has formally recognised the Tibet Government in Exile (TGIE). And yet the Europeans sustain the exile cause in many other non-official ways, evidenced by thousands of ‘Tibet supporters’ rallying to it, including individual parliaments, rights activists, celebrities, artists and ordinary converts to Tibetan Buddhism.

The purpose of this section is to contextualise the Tibet question with implications on how the European views relate to the historical status of Tibet and political expressions such as human rights and sovereignty adopted by actors connected with the debate. It does so by looking at the ways in which different views of Tibet’s political status and internal situation have come about. The following themes are drawn from the historical background of the Tibet question as often framed in international debates, whilst no attempt is made to deal copiously with the complex history of the Tibet question itself. The reason why this constitutes a point of departure is that it helps us understand the state of the controversy to shed light on why the EU and China tend to talk past each other on the issue of Tibet. Furthermore, it sets out factual conclusions for assessing the legitimacy claims of European foreign policy.

5.1.1 The Chinese “Occupation” of Tibet

At the core of the China-Tibet²⁴² dispute is the historical status of Tibet, with regard to which the main controversy as to whether Tibet had been independent or part of China in recent history (Sautman and Dreyer 2006, Goldstein 2004). The PRC’s political claims on Tibet are, first and foremost, based on historical control. As unequivocally stated in the 1992 White Paper on Tibet and the official documents on its ‘ownership of Tibet’, China

²⁴⁰ ‘Foreign Ministry Spokesperson Qin Gang’s Remarks on British Prime Minister Brown’s Meeting with Dalai’, Ministry of Foreign Affairs of the People’s Republic of China, Beijing, 26 May 2008.

²⁴¹ ‘Address by His Holiness the Dalai Lama at the Palace of Westminster’, London, 16 July 1996, available at <http://hhdl.dharmakara.net/westministewr.html>, [accessed 12 Apr. 2011]

²⁴² The term ‘China-Tibet’ is only used outside of the People’s Republic of China; the Chinese official discourse applies ‘China’s Tibet’ in international debates on Tibet.

maintains that:²⁴³

‘In the mid-13th century, Tibet was official incorporated into the domain of China’s Yuan dynasty [1271-1368]. Since then, although China experienced several dynastic changes, Tibet has remained under the jurisdiction of the central government of China.’

In the mind of the PRC government, the fact that the China had not effectively ruled over Tibet between 1912 and 1951 does not suggest that Tibet was once independent. From the collapse of Qing Dynasty in 1912 until the Communist Party took power in 1949, China was tattered by warlordism, invaded by the Japanese, and then marred by the civil war between the Nationalists and the Communists (Grunfeld 1996: 256). Therefore, the Chinese government claims that Tibet is part of China, which they ‘peacefully liberated’ in 1951, and have since subsidized and developed economically under the terms of the *Seventeen- Point Agreement*.²⁴⁴

Tibetan exiles on the other hand maintain that Tibet has always been an independent political entity for the past 2,000 years. Some exiled leaders hold that the consequence of asserting the past independence of Tibet is not only that Tibet is an occupied state, but also that its independence must be regained.²⁴⁵ The Dalai Lama also holds that Tibet had been independent when China invaded and began China’s “illegal occupation” of the country (Goldstein 1997: 77). However, in what he called “middle way” as preconditions to talk with China, he accepted Tibet as part of the PRC, but insisted a Greater Tibet should

²⁴³ *China’s White Paper on Tibet*, Beijing, 24 September 1992; *Tibet-Its Ownership and Human Rights Situation*, Beijing, September 1992. The two documents are almost identical, although some small important textual amendments were made to the later.

²⁴⁴ *The Agreement of Central People’s Government and the Local Government of Tibet on Measures for the Peaceful Liberation of Tibet (The 17-Point Agreement)*, was signed between the 14th Dalai Lama and the PRC on affirming Chinese sovereignty over Tibet. While the Chinese authorities consider the document as legally binding and mutually welcomed by both governments and by the Tibetan people; the Tibetan exiles, on the other hand, international governments and Tibet support groups generally consider the document lacking authority as it was signed by the Dalai Lama under duress. According to the report by the ICJ in 1997, the ICJ recognised that ‘Tibet signed at pistol-point’ (1997: 95), and ‘the 17-Point Agreement was a contradictory document, guaranteeing on the one hand no alteration of Tibetan political and religious systems, while on the other hand providing for Tibet to be governed by the system of “national regional autonomy”’. The system of national regional autonomy, while promising much in generalities, was vague as to specifics, and was to become entirely dependent upon Chinese interpretation and implementation’ (ICJ 1997: 47).

²⁴⁵ Such as the Tibetan Youth Committee or senior political leaders such as the Dalai Lama’s brother, Takster Rinpoche.

become a self-governing political entity founded on a constitution that granted Tibet Western-style democratic rights.²⁴⁶ The PRC dismissed this public offer as an indirect form of independence.²⁴⁷

Since the Dalai Lama fled China in 1959, the two sides have quarrelled over this historical issue more than any other matter, with the debate aiming at mobilizing support, rather than arriving at a common ground. As Goldstein (2004: 188) points out:

“Not only there has been relatively little first-hand scientific research in the Tibetan areas in China but there has also been a tidal wave of misleading and often dissembling partisan writing and rhetoric generated by the combatants and their supporters. Both sides [of the PRC and the TGIE] have expended an enormous amount of time and effort to spread their representations of past history and contemporary politics, the result being diametrically opposed constructions of reality make it difficult for any but specialists to assess.”

In the past two decades, the EU’s position on the Tibet question has generally been ambiguous and accommodating, but its major concern has never been Tibetan independence. Despite British attempts to control the area in the late 19th century and early 20th century, Britain and other European countries do not stand out in the Tibet question in contemporary history as external powers, unlike India which is the exile’s primary host, or the United States which had financially and militarily supported the Tibetan cause back in the 1950s and 1960s. Thus, for all of the efforts on behalf of the Tibetans to have helped the Tibet cause gain enormous international visibility, the EU policymakers have not committed themselves to more than autonomy for Tibet under China. Instead, they insisted that the Tibetans focus their publicity on China’s violations of human rights rather than on the core political issues the Tibetans wanted to raise – that is, Chinese invasion and occupation of their country.

5.1.2 “Violation of Human Rights” of Tibetans

International concerns of human rights abuses in Tibet focus on cultural genocide, political

²⁴⁶ See ICJ Report (2007: 98), *ibid.*

²⁴⁷ See ‘Tell you a true Tibet – Origins of so-called “Tibetan Independence”’, *Xinhua News*, Agency, 26 April 2008.

imprisonment and torture, the illegitimacy of China's sovereignty in the region, and the Chinese (PRC) government's reluctance to fully embrace universal human rights.²⁴⁸ Other areas of human rights violations, according to Human Rights Watch (HRW), centre around religious freedom being reportedly violated by the Chinese government's policies through manipulating Tibetans' religious practices and sentiments for political purposes (Sperling 2000a: 2). Particularly prominent in this case has been the "patriotic education" campaign which is allegedly aiming at diminishing the influence of the Dalai Lama's on Tibetans in Tibet (Sperling 2000a: 3). Furthermore, certain monasteries and temples are put under secular, heavy-handed governmental management by the Chinese authorities in order to implement greater control over the Tibet region (ibid.). Another well-known case is Gedhun Choekyi Nyima - the incarnation of the 10th Panchen Lama recognised by the 14th Dalai Lama, who has been under house arrest in an unknown location since 1995 at the age of six. Moreover, there have been contentious reports on torture of political prisoners in Tibet.²⁴⁹

In general, the Chinese government neglects the international criticisms on the alleged rights violations in Tibet, and insists that it is an issue of Chinese territorial integrity and national unity.²⁵⁰ The Chinese official's standardised statement at the regular sessions of the UN Human Rights Council argues:

*'The Tibet issue is entirely an internal issue of China which concerns the country's sovereignty.....[it] is not an ethnic issue, not a religious issue, nor a human rights issue, but an issue either to safeguard national unification or to split the motherland.'*²⁵¹

²⁴⁸ As one example of such human rights abuses, ten monks from Drepung monastery were imprisoned for 5 to 19 years for 'crimes' such as producing a Tibetan translation of the UDHR. See *Defying the Dragon – China and Human Rights in Tibet*, jointly issued by LAWASIA and the Tibet Information Network, March 1991, p.118

²⁴⁹ Evidence on these violations of human rights has been documented by the renowned Tibetologist Elliot Sperling who collaborated with Human Rights Watch on the book, *Tibet Since 1950: Silence, prison, or Exile*, (2000b), Robert Hale: London.

²⁵⁰ In general, Chinese scholarly accounts do acknowledge that human rights in Tibet during the Cultural Revolution were severely violated, but so did other areas in China. They particularly pointed out that the U.S government's neglect on rights violations during that period. See Xu Mingxu and Yuan Feng (2006: 308) and Zhang Zhirong (1994: 145-170)

²⁵¹ The Chinese diplomat Qian Bo, Counsellor of the Chinese Mission to the UN Office in Geneva was addressing a regular session of the UN Human Rights Council, see 'Tibet issue not about human rights, says diplomat', *Xinhua News Agency*, 6 June 2008.

In addition, the PRC argues that the Dalai Lama institution in feudal Tibet itself had severely undermined Tibetans' human rights:

*'Before the Democratic Reform of 1959, Tibet had long been a society of feudal serfdom under the despotic religio-political rule of lamas and nobles; a society which was darker and more cruel than the European serfdom of the Middle Ages.'*²⁵²

With the American rapprochement with China in the 1970s, little was indeed said in the West about the destruction of traditional life within Tibet, which peaked during the Cultural Revolution (1966-1976). Zhang (1994: 170-171) acknowledges that 'the Chinese government had made mistakes in its Tibet policy, particularly the destruction of Tibetan monasteries and religious practice in Tibet during the Cultural Revolution (1976-1977); however, the Cultural Revolution was not directed to Tibet, it was a nation-wide disaster'. When other communist regimes fell in Eastern Europe, international attention was paid to the Tibetan question again while the discourse of international human rights emerged (Anand 2002: 168). In the mid-1980s, as tensions rose in Tibet due to the influx of Chinese population, failure of the dialogue with the Chinese government and renewed political repression, the Dalai Lama decided to 'internationalise' the Tibet question as a human rights problem and seek governmental support in the West (Goldstein 1997: 75-78; Grunfeld 1996: 231-233; Mountcastle 2006: 90). As rights issues enjoy a growing profile in international politics after the end of the Cold War, the Tibet question has continued to gather wide support in the West, and provided the Tibetan exiles and their supporters with a participation in global politics they would not otherwise have (Adams 1998: 76).

On the other hand, the Chinese struggled to make sense as to why the Dalai Lama's international initiative suddenly garnered so much sympathy and support across political spectrum. For the Chinese, the 1980s was the start of China's economic 'miracle' after the mistakes of the Cultural Revolution had just been vindicated by the Communist Party. Meanwhile, Tibetans also enjoyed an unprecedented level of prosperity in economy, health and infrastructure, thanks to the CCP's economic reform. In addition, the Chinese recalled the silence of the West over Tibet in the 1970s, and believed the 'so-called Tibetan human rights problem' was manipulated and fabricated by those with 'ulterior motives' (Zhang

²⁵² *White Paper: Tibet – its ownership and human rights situation*, PRC, 24 September 1992, Beijing

1994: 172).

For many Europeans, their concern and support for the Tibetan cause are mainly framed in human rights discourse, in which China's infringement of rights in Tibet mainly refers to cultural rights, religious freedom and minority rights.²⁵³ In the Joint Statement with the U.S regarding to the unrest in Tibet in 2008, the EU reiterated its human rights perspective towards the issue of Tibet.²⁵⁴ The British government in its latest statement represents a watershed in its Tibetan policy – that is, one that concerns human rights not its political status:

*'No government which is committed to promoting international respect for human rights can remain silent on the issue of Tibet, or disinterested in a solution to its problems. [...] Our interest is not in restoring an order which existed 60 years ago and which the Dalai Lama himself has said he does not seek to restore.'*²⁵⁵

For Mountcastle (2006: 89), not only human rights become a political strategy of particular efficacy from a realist perspective, it is also an ideological tool to broaden the spectrum of participation of the Tibet question as an international moral concern. Barnett (2001: 291) notices that, the concept of human rights offers a language that can respond to the Western domestic audience as criticising China, meanwhile, Chinese officials would consider such criticisms on human rights violations as sufficiently mild so as not to threaten China's fundamental interests in Tibet.

5.1.3 The Historical Legacy of European Imperialism

Chinese official account argues that the Tibet question emerged as a direct result of the British expansion in Asia and its aggression into Tibet, and accuses the Tibetan independence movement as being launched by pro-British clique founded by British invasion and bribery in the early 20th century (Zhang 1994: 47-49; Xu and Yuan 2006: 307-

²⁵³ For instance, see EU Human Rights Report 2008, 14146/2/08 REV 2, p.20

²⁵⁴ 'EU-US Summit Declaration Joint Statement on the Sino-Tibetan Dialogue', in *2008 EU-US Summit Declaration*, the Council of the European Union, Brdo, Slovenia, 10 June 2008

²⁵⁵ Written Ministerial Statement, David Miliband, the Secretary of State for Foreign and Commonwealth Affairs, 29 October 2008

311).²⁵⁶ According to Goldstein (1997), Britain and Russia had formally acknowledged Chinese suzerainty over Tibet in treaties signed in 1906 and 1907; and the British invasion of Tibet had encouraged the Qing Empire to integrate Tibet with the rest of its territory. For Goldstein (1997: 37), the double standard of British policy²⁵⁷ of being willing to deal directly with Tibetans without recognizing their independence revealed the ambiguous and hypocritical attitude of the Western world towards Tibet for its strategic location as a buffer state in Central Asia and commercial interests in the Chinese empire. As a result of these agreements, claimed by Chinese scholars, British India annexed 90,000 square kilometres of the ‘Chinese territory’, and had the privilege of exemption from customs duty and other taxation in Tibet, with many trading ports and stationed troops under the British control (Zhang 1994: 55-59; Xu and Yuan 2006: 308).

For all its practical purposes, the official line of the PRC government considers all pro-independence campaigns as driven and backed by “Western imperialism” with the aim to destabilise China and eventually destroy its territorial integrity and sovereignty.²⁵⁸ Therefore, with imperial Britain and contemporary U.S who had supported the Tibetan uprising in the 1950s and 1960s in mind, the Chinese official account from the White Paper concludes that:

*“Historical facts over more than a century clearly demonstrated that so-called ‘Tibetan independence’ was, in reality, cooked up by old and new imperialists out of their crave to wrest Tibet from China.”*²⁵⁹

In contemporary Tibetan studies, there is a consensus that the West has played a crucial role in framing the Tibet question in terms of, not only the historical legacy of British imperialism, but also the vocabulary of political expressions, particularly ‘sovereignty’ and later ‘human rights’ (Anand 2006, Goldstein 1997). The failure of the British to understand the complex relation between Tibet and China led to an anachronistic understanding of the

²⁵⁶ See *White Paper: Origins of So-Called “Tibetan Independence”*, (1992), and “Tibet issue”, evolution and way out, China Tibet Information Centre Website, http://www.tibetinfo.com.cn/english/services/forum/for_202.htm

²⁵⁷ These conflicting interests dictated an ambiguous policy, where Tibet’s relation with the Chinese empire was seen in terms of Chinese suzerainty and protectorate, and Tibetan autonomy from the very beginning of the twentieth century, see Norbu (1990), ‘the Europeanization of Sino-Tibetan Relations, 1775-1907: the Genesis of Chinese “Suzerainty” and Tibetan “Autonomy”’, *Tibet Journal* 15, No. 4: 28-74, quoted in Anand (2006: 291)

²⁵⁸ *Origins of So-Called “Tibetan Independence”*, ibid.

²⁵⁹ *White Paper: Tibet – its ownership and human rights situation*, 1992, ibid.

pre-modern Tibet's relationship with China in modern political and legal standards (Wang 2006, Anand 2006). To that end, the genesis of the Tibet question is not the historical conflict between the Chinese and the Tibetans, but British imperialist endeavour in the name of 'Chinese suzerainty' and 'British protectorate' which inevitably made China gain control over Tibet in 1951 in absolute rule (Anand 2006: 293). On the other hand, Anand (2006:285) points out that:

'Ironically, the Chinese state, which defies the West politically, does so without questioning its wholesale adoption of Western conceptions of statehood, sovereignty, and realpolitik. Similarly, the Tibetans, exoticized as products of uniquely non-Western culture, argue for their independence using the same Western ideas that they considered as alien until mid-twentieth century.'

In view of the European imperialistic legacy, how do we know that 'normative power' Europe should not be perceived as a mere expression of Eurocentric imperialism in the Tibetan case? On the one hand, the normative legitimacy of European foreign policy is clouded by the imperialist legacy of Britain in the eyes of the Chinese. On the other hand, the EU has a significant role to play in the eyes of the externally based Tibet support groups concerning human rights violations inside Tibet. That the legacy of British imperialism in Tibet has invoked a European identity perceived by the Other - China, is an interesting question to be asked, reflecting upon some fundamental questions regarding what Europe is. In this case, EU member states' colonial past clearly have implications in the European Union's relations with the rest of the world today (Bhambra 2009: 72). Diez (2004: 321) suggests that 'the most important other in the construction of a European identity has been Europe's own past', thus calling for 'a greater degree of reflexivity'. In this empirical investigation, linking the normative power of the EU with the early twentieth century British imperialism, simply because they share the same logic of self/other identity is a 'neo-colonial' approach to NPE Manners has effectively denied (Manners 2006). Drawing from the patterns in Euro-Med relations, Nicolaïdis and Nicolaïdis (2006) suggest that the EU's 'wisdom' and 'guilt' in the eyes of the non-European other can be reconciled through 'collective post-colonial atonement'. In this vein, the source of legitimacy of European universalism has to rely on 'the universalism of others' through transcending conventional political boundaries and frameworks. However, the problem with such reconciliation lies in the resistance to accepting European universalism. From a post-

colonial perspective, China cannot view the values the EU promotes as ‘universal’ simply because it had disastrous experience as a result of Western imperialism which justified itself by reason of the same value system (Golden 2006: 268) Moreover, the reason the Tibet issue does not meet the precondition of ‘universality of others’ for such reconciliation can be understood in two-fold: 1) the international debate on Tibet’s political status is framed in sovereignty and statehood, whereas the EU subscribes itself to a post-Westphalism model; 2) international human rights standards are contested by the Chinese cultural relativist attitude and justification of its policy based on other sets of international norms.

In order to justify the post-modern image of the EU has of itself as a normative power instead of an imperialistic power, it is thereby necessary to look into the body of international human rights law literature on Tibet in order to identify the normative basis which serves as ‘external reference point’ (Manners 2006a: 170) and constitutes the source of normative justification for NPE.

5.2 Tibet and International Human Rights Norms

After the initial appeal to the UN regarding Chinese aggression in 1950, the 14th Dalai Lama made a second appeal on 9 September 1959 upon his exile in India. Subsequently, three UN resolutions were passed in 1959, 1961 and 1965, all of which were ‘gravely concerned’ at the ‘violation of fundamental human rights of the Tibetan people’.²⁶⁰ The attitude of the UN General Assembly, as indicated in the resolutions, pointed to only one direction that Tibet’s demand was justifiable. With the PRC’s entry into the UN in 1971 following the Sino-Soviet split and the rapprochement with the US, Tibet was not discussed in the UN until 1985 at the 41st session of the Commission on Human Rights (ICJ 1997; Cao and Seymour 1998). However, the award of the Nobel Peace Prize of 1989 to the Dalai Lama was a major boost to the morale of Tibetan exiles, and had symbolically taken the international support for the Tibetan cause to an unprecedented level.

This section looks at the extent to which international human rights law is relevant to the Tibet question, and the implications of international human rights law for the normative

²⁶⁰ GA res. 1353(XIV) on 21 October 1959; GA res. 1723(XVI) on 20 December 1961; and GA res. 2079(XX) on 18 December 1965.

justification of the EU's policy on Tibet. The purpose of this section is two-fold. Firstly, it defines normativity in terms of the international efforts to solve Tibet's political, human and legal problems. To that end, the normative basis for NPE analysis is established through discussing the legitimacy and validity of the international norms that the issue entails. Although a complete, neutral and detailed analysis on legal relevance of the Tibetan question is likely an impossible one, a legal definition based on the highest level of international law, such as those found in the UN resolutions on Tibet, or the most widely recognised legal interpretation will form the basis for normative justification. Secondly, after clarifying the relationship between international human rights standards and NPE, it demonstrates strengths and weaknesses of international legal remedies to solve the Tibet question, which are particularly salient for the EU to come up with a policy strategy that deals with the reality that China has become the EU's 'indispensible partner', and also has a 'legitimate influence to exert on China'.²⁶¹

5.2.1 Right to Self-determination

The right of self-determination is recognised as a human right in the first article of the UN Charter and both International Covenants on Human Rights. The very first articles in both Covenants identically assert that:²⁶²

'All peoples have the right to self-determination. By virtue of that right they freely determine, without external interference, their own political status and to pursue their economic, social and cultural development'.

The question, therefore, is whether the Tibetan people have this right. According to all three UN resolutions, the General Assembly had referred to the Tibetans clearly as the "Tibetan people". The second UN resolution on Tibet passed on 20 December 1961 specifically called for the 'cessation of practices which deprive the Tibetan people of their fundamental human rights and freedoms, including their right to self-determination', which was reiterated in the third UN resolution in 1965.²⁶³ Moreover, the General Assembly debates at the time as well-documented in the ICJ reports show that the Tibet question was

²⁶¹ 'Living with China', Speech by Peter Mandelson, EU Trade Commissioner, at the China-Britain Business Council, London, 15 April 2008.

²⁶² The ICESCR, GA res. 2220(XXI) on 16 December 1966; and the ICCPR, GA res.2220(XXI) on 16 December 1966.

²⁶³ GA res. 1723(XVI), para.3 and 5; GA res. 2079(XX) para. 2

considered by a majority of its member states ‘in the context of a distinct people under alien subjugation and domination entitled to exercise its legitimate right to self-determination’.²⁶⁴

In 1990, a UNESCO ‘Meeting of Experts on Further Study of the Rights of People’ produced a working definition that describes the characteristics of a ‘people’ in the context of the rights of people under international law, including the right of self-determination.²⁶⁵ This is a formulation that has found favour with many international lawyers, and was adopted by many international organisations, including the European Parliament.²⁶⁶ Based on this very definition, there have been two important unofficial investigations into the question of self-determination for the Tibetan people held in the early 1990s. The first, in November 1992, consisted of hearings by the Permanent People’s Tribunal meeting in Strasbourg. The second was through the 1994 Conference of International Lawyers (CIL) on issues relating to self-determination and independence for Tibet, with contributions from both leading legal experts and historians. Both conferences concluded that, by each of these criteria, the Tibetans are a people and their right to self-determination was denied. Moreover, in the latest authoritative report (1997) by the International Commission of Jurists (ICJ) on Tibetans as ‘a people’, it suggested a ‘minimalist conception’ which follows that the right of self-determination as a norm of general international law applies, as a minimum, to “peoples”.²⁶⁷ Therefore, even though the right of self-determination is a contentious matter in international law, and is the subject of divisive debate, there is no serious dispute among international lawyers, historians and Western Tibetologists that Tibetans as a people have a right to self-determination, regardless the extent to which its various conceptions apply.²⁶⁸

²⁶⁴ *Tibet – Human Rights and the Rule of Law*, the ICJ, December 1997, p.333

²⁶⁵ See SHS-89/CONF.602/7, Paris, 22 February 1990, ‘International Meeting of Experts on further study of the concept of the rights of peoples’, final report and recommendations, UNESCO, Paris, 27- 30 November 1989, p.7

²⁶⁶ *Report of the Committee on Foreign Affairs and Security on the Situation in Tibet*, by Rapporteur Mr Jannis Sakellariou, European Parliament, A3-0369/92, 16 November 1992, p.17

²⁶⁷ According to Falk (1994:1), a ‘minimalist conception’ of self-determination refers to ‘restrictive interpretation of the right of self-determination, as applicable to people under colonial or alien rule’.

²⁶⁸ Kamenka (1994: 54) suggested that ‘the Tibetans are a people and have been so for longer than most European nations, certainly in the sense in which each of the English, the French and the Germans are a people. Very few European nations have had borders nearly so definite as Tibet,’ at the 1993 ‘Conference of International Lawyers on Issues relating to Self-Determination and Independence for Tibet’.

In the *White Paper*, China calls Tibet ‘China’s Tibet’, evidencing its ‘ownership’.²⁶⁹ For China, the claim on Tibet is simply based on historical arguments intended to establish the territorial integrity of China, which inevitably come into conflict with the competing principle of the right to self-determination. While Chinese official lines have made no mention of the issue of the right to self-determination regarding Tibet, Chinese scholarship recalled that the principle of self-determination was initially developed by the UN in the decolonisation context. The inclusion of this right into the most important UN human rights treaties in 1966 was initiated by Socialist and Third World Countries, and the European colonial powers opposed it (Zhang 1994: 9).²⁷⁰ Therefore, it does not apply to ‘China’s Tibet’ as one of China’s fifty-sixty ‘national minorities’²⁷¹. Ironically, as for the UN resolutions (1959, 1961 and 1965), Chinese scholars also believed that they were essentially product of Western manipulation²⁷², and yet understandably so, given no UN resolution on Tibet was passed since the Sino-US rapprochement in the early 1970s (Zhang 1994; Xu and Yuan 2006).

So far, the PRC has been successful in preventing the UNCHR deciding on the Tibet issue, claiming that behind all the human rights arguments was really the claim of independence for Tibet. One such resolution in 1992, proposed mainly by the EU, was successfully opposed by the United States and China with its Third World supporters, because the opposing view that the integrity of the state took precedence over the rights of self-determination prevailed (Seymour 1998: 21).

Strictly speaking, if Tibet had been an independent state before the Chinese invasion as a case for external self-determination, then in principle, the remedy under UN Charter lies in the restoration of Tibet’s sovereignty and exclusive control over its territory and people (Erasmus 1994: 43). However, the fact that China is a permanent member of the Security Council wielding a veto power is unfortunately a political reality. Thus, for politically convenience, it is only possibly for Western legal and political practitioners to address the

²⁶⁹ *White Paper: Tibet – Its Ownership and Human Rights Situation* (1992), *ibid.*

²⁷⁰ The ICJ reports also confirmed this stage of development in the legal history of ‘the right to self-determination’. See ‘Tibet – Human Rights and the Rule of Law’, the ICJ, 1997, p.321

²⁷¹ *The White Paper* (1992), *ibid.*

²⁷² This accusation by Chinese scholars also applies to the ICJ, an international human rights non-governmental organization, which was initially funded by the CIA in the 1960s. See Zhang (1994), pp. 127-170; 283-301.

Tibet question if they focus on Tibetans as minority or as individuals without challenging the legality or illegality of the Chinese invasion and occupation.

5.2.2 *Minority Rights*

For the reasons above, Tibet began to be seen by many Western governments since early 1990s as an ethnic or minority question which echoed the Chinese official position. International standards that codify minority rights can be found in the ICCPR (*Article 27*), which stipulates:²⁷³

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

In 1959 the United Nations General Assembly called “for respect for the fundamental human rights of the Tibetan people and for their distinctive cultural and religious life”.²⁷⁴ In 1961 it spoke of the “suppression of the distinctive cultural and religious life which [the Tibetan people] have traditionally enjoyed.”²⁷⁵ This concern was reiterated in 1965.²⁷⁶ Given at the time Tibet’s political status was still central to the UN’s concern as a case for self-determination, the Tibetan question was not framed as a problem of minority rights during a period when there was virtually no law of minority rights at all. Not until 1991, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UNCHR adopted the first resolution reacting to the international criticism of the human rights situation in China after 1989 in general and in Tibet in particular, concerned “at the continuing reports of violations of fundamental rights and freedoms which threaten the distinct cultural, religious and national identity of the Tibetan people”.²⁷⁷

For international legal perspective, the concept of minority rights intentionally leads away from the notion of the right of a people, and therefore, away from the right of self-determination, whereas the content of minority rights covers the right of persons belonging

²⁷³ The ICCPR, GA res.2220(XXI) on 16 December 1966.

²⁷⁴ GA res. 1353 (XIV) (1959), para.2, see Annex 3, in *Tibet – Human Rights and the Rule of Law*, International Commission of Jurists, December 1997

²⁷⁵ GA res. 1723(XVI), preamble para.2, see Annex 4, *ibid*.

²⁷⁶ GA res. 2079(XX) (1965), para.3, see Annex 5, *ibid*.

²⁷⁷ Res.1991/10, the UNCHR, adopted on 13 August 1991

to a minority category, thus to equal protection of the national law without discrimination (Berman 1994: 55). *Article 1* of the PRC Constitution (1982) stipulates that: “it is necessary to combat big-nation chauvinism, mainly Han chauvinism”.²⁷⁸ While acknowledging the role of Han chauvinism in ethnic tensions in China and having developed an “ethnic law” that ensures rights of the minorities, the CCP have rarely come up with measures against chauvinistic Han Chinese (Sautman 1999). Sautman (1999: 289) thus concludes that much legislation for minority rights in China is “vague and abstract”, and ‘the degree to which these rights are guaranteed by specific, mandatory provisions varies from measure to measure’. Keller (1994: 65) points out, in Tibet, with its recent history of anti-China rebellion and unrest; the Communist Party’s policies are framed by “a perceived imperative of national unity”, and Beijing’s instructions remain largely unknown.

To address the Tibet issue as a question of minority rights, the international community is now able to focus on Tibetans as individuals, regardless they are a people or a minority. In this vein, the ultimate question is to what extent Tibetans as individuals and as an ethnic group has genuine freedom to use and develop their language and culture under the Chinese law (Sautman 1999; Keller 1994). However, international law, despite being relevant to the situation in Tibet, can hardly offer an objective standard by which to measure the degree of minority rights enjoyed in the Tibetan areas of China, not to mention the lack of access to credible source of evidence.

5.2.3 Other Human Rights

Freedom of expression, freedom of religious belief and freedom from torture, the rights to fair trial, to education and political rights, are all part of the vocabulary articulating breaches of individual human rights in Tibet under the UNDHR by international lawyers.²⁷⁹ In response to these criticisms, the Chinese government has produced an abundance of materials including ‘white papers’ on ‘Human Rights in China’, ‘Criminal Reform in China’ and ‘Tibet – Its Ownership and Human Rights Situation’, all of which, according to international legal experts, have left many questions unanswered and are in contradiction

²⁷⁸ Cited in Sautman (1999:290), *ibid*.

²⁷⁹ Indicated by Res 1991/10 of the Sub-Commission of Prevention of Discrimination and Protection of Minorities, adopted on 23 August 1991 on the ‘Situation in Tibet’ and the following discussion under agenda item 12 in the UNCHR in spring 1992, which are considered by the conference of International lawyers on ‘Tibet: the position in International law’ as evidence.

with the findings of independent international organisations and experts (Benedek 1994: 132).

Regarding its international obligations, China has ratified the ICECSR in 2001 but only signed the ICCPR in 1998 under international diplomatic pressure, notably from the Clinton administration. Wherever China's compliance is under scrutiny in these matters regarding Tibetan's human rights, the principle of domestic jurisdiction or non-interference in internal affairs will be invoked by the Chinese government.²⁸⁰ Moreover, even before the process of compliance to obligation of two Covenants took place, China had already consider the 'White papers on Human Rights in China', issued in 1992, as a proof of China's accountability.²⁸¹ Therefore, in any case, China does not refuse to recognise the rights guaranteed under the International bill of Rights; but rather, it argues that these rights are already well guaranteed by its national standards which are consistent with the universal standards (Benedek 1994: 134; He 2006: 79-80).

5.2.4 Norm Contestation and Beyond

For international lawyers, there is hardly any right in the UNDHR which is not infringed in the Tibetan case, even though there is no impartial historical "truth" that determines whether Tibet was an independent nation or always being part of China (Anand 2006: 287). General Assembly resolutions, although indicative of a worldview, are not binding on Member States. Compared to the complexity in defining the Tibet issue in Western scholarship, the Chinese view is a relatively simple and straightforward one. For China, it is an issue of territory integrity and Chinese sovereignty, and that, as the late leader Deng Xiaoping once said about sovereignty issues, "is not open to negotiation [with any foreign country]" (Jian 2009b: 2).

In this context, for NPE to address the Tibet question, the attempt to situate the issue in international human rights law has demonstrated a considerable level of norm contestation. First of all, in theory, it is not that the Tibetans' demand for human rights, including the

²⁸⁰ 'Tibet issue not about human rights, says diplomat', *Xinhua News Agency*, 6 June 2008.

²⁸¹ The official newspaper pointed out that 'the white paper is a first-hand, authoritative resource for those who are interested in Tibet, for either academic purposes or political reasons. With full and accurate information, the white paper clearly demonstrates the central and local governments' unremitting efforts in promoting comprehensive development and safeguarding and proving human rights in Tibet', in 'Europe Right on Rights', *China Daily*, Beijing, 27 February 1998, p.4.

right to external self-determination, lacks legal justification according to international human rights standards, but rather, there is an inherent contradiction underpinning the double relationship between a collective right and individual rights. As Benedek (1994: 135) points out, ‘on the one hand, the right to self-determination is considered to be a precondition for the full enjoyment of human rights. On the other hand, the denial of individual human rights may justify the exercise of the right to self-determination’.

Secondly, on the empirical level, if the Tibetan question is an issue of the right to self-determination, China calls Tibet one of their many ‘national minorities’, whereas the international Tibet support groups generally consider ‘Tibetans’ as ‘a people’ whose right of self-determination has been denied. On the other hand, if it is an issue of minority rights, the Chinese believe that it has its own idea of autonomy, as different from liberal theories of autonomy. The Chinese state conception of “ethnic regional autonomy” (*shaoshuminzu quyu zizhi*, 少数民族区域自治) is derived from Marxism, which stipulates “a unitary, centralised political system and the multi-ethnic solidarity of workers and peasants, as well as from a pragmatic assessment of what sort of system facilitates stability and economic development” (He 2006: 11). Either way, this sets NPE and the Chinese perspectives in completely separate paradigms.

To establish the source of legitimacy for NPE, Sjursen (2006b: 246) suggests a rights-based normative justification that is founded upon a cosmopolitan legal system which aims to protect rights of individuals, not the sovereignty rights of states. To that end, a human rights perspective to the Tibet question allows the EU to adopt a language so that the Tibetan cause can enjoy global attention as a moral concern. It also legitimises scrutiny of the way in which China treats its own inhabitants by other States.

Moreover, given the weak machinery of international human rights law, the best remedy for breaches of these human rights is international opinion in the Chinese case (Wan 2001: 69). To that end, it is important to base the legitimacy of NPE on international human rights standards. If China is simply reacting to international opinion, it is thereby reacting to its legal obligations, regardless of whether China is legally or morally bound to guarantee certain rights or not (Benedek 1994: 134).

5.3 EU Normative Power on the Issue of Tibet

This section applies the tripartite framework, as developed in *Chapter Two*, to the issue of Tibet against the backdrop of the EU-China relations between 1989 and 2009. To do so, I follow the example of the previous chapter, and address similar questions. Guided by the main hypothesis that the EU has been a normative power towards China on the issue of Tibet, each section of the tripartite framework looks at the way in which EU normative principle applied to the Tibetan case is constructed, the mechanisms through which norms are diffused, as well as the way in which normative impacts are evaluated. Throughout this analysis, the EU is approached as one normative entity with complex internal dynamics; therefore, whichever EU actor and/or individual member states took the lead in the policy process or defined the EU's action, would represent EU normative power at work.

5.3.1 Normative Principle

The legal formula that has provided guidance in framing the EU's response to the situation in Tibet had been ambiguous and varied significantly over time among different EU bodies and member states. In the early and mid 1990s, The European Parliament had been the only EU institution which was willing to recognise Tibet's right to self-determination and considered Tibet as illegally occupied citing the principles laid down by international law and three resolutions of the UN.²⁸² With regard to Tibet, the legal basis was defined by the Parliament as:

*'...self-determination, a fundamental principle enshrined in Articles 1(2) and 55 of the United Nations Charter, is affirmed as a right of peoples in Article 1 of the United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights.'*²⁸³

Although the Parliament regarded the autonomy granted to the Tibet Autonomous Region (TAR) by the PRC as insufficient, it did not explain precisely the extent to which Tibetans can legitimately exercise the right to self-determination.

Since late 1990s, a more defined approach that focused on violations of human and

²⁸² A3-0369/92, European Parliament resolution on the situation in Tibet, 25 January 1992

²⁸³ European Parliament (1992), *Report of the Committee on Foreign Affairs and Security on the Situation in Tibet*, Rapporteur: Mr Jannis Sakellariou, 16 November 1992, A3-0369/92, p.5

minority rights and religious freedom can be identified in EU official documents on Tibet, however, which of these rights were to be prioritized was never openly discussed or articulated. When the basis for EU action in the field of the common foreign and security policy was strengthened as The Treaty of Amsterdam which brought several new provisions relating to human rights, the Tibet issue was held to a different standard in the Commission's first Communication on China in 1998 compared to previous Parliament resolutions:

*'As it attaches great importance to the respect for the cultural, linguistic and religious identity of ethnic minorities, the EU will continue to raise issues relating to these matters in Tibet within the bilateral dialogue on human rights.'*²⁸⁴

To that end, the legal bases that framed the EU's response to China's human rights violations, including the situation in Tibet, became the EU Treaty and its provision on human rights, namely *Article 11(1)* of the Treaty on European Union and *Article 177* of the EC Treaty.²⁸⁵ Since then, it seemed the EU members had shared an implicit consensus that the EU recognised China's sovereignty over Tibet, and only the respect for human rights and religious freedom would frame the EU's responses to the issue of Tibet.²⁸⁶

The following sub-sections look at whether and how the EU had developed its approach to Tibet, and ask the extent to which Tibet's human rights problem has become aims and objectives in EU foreign policy. I use constructivist insights to EU normative principle to analyse how the EU's positions on Tibet were formulated, and then virtue ethics to provide assessment criteria to judge the policy consistency and coherence.

5.3.1.1 Normative Identity

Unlike China who stresses the primacy and absoluteness of the principle of state sovereignty and territorial integrity, the EU on the other hand, has developed its own

²⁸⁴ COM(1998)181 final, *ibid*.

²⁸⁵ B5-0050, 0064, 0079 and 0083/2000, European Parliament resolution on the human rights situation in China, 20 January 2000, Strasbourg.

²⁸⁶ For EU stance, see 'EU considers Tibet part of China', *Agence France Presse*, Beijing, 25 April, 2008; for member states' view, for instance the UK, see 'Britain Wants China to Grant Tibet Freedoms', *Reuters*, 20 October 1999.

approach to the fundamental issue of statehood and sovereignty based on the principles of international law with the willingness to discard the Westphalian system of sovereignty (Foot 2001: 2; Manners 2002: 239).

Reflecting upon the Tibet issue, its political status has never been an openly contentious component among EU institutions and member states or in relations with China, due to the sensitive nature of the issue and China's power status. However, it would be too simplistic to assume that they all attach the same level of importance to human rights norms when it comes to the issue of Tibet.

The European Commission has established the most frequent exchange and extensive linkage with its Chinese counterparts, but the normative/legal framework through which the Commission address the issue of Tibet has been ambiguous. Understandably, this relationship has been complicated by the desire to strengthen business ties with China. Within these limits, the Commission wants to build a working relationship with China that can "insist on [EU] values", and address Tibet "without coming off the tracks"²⁸⁷. When the President of the European Commission took the first chance among Western states to meet with a Chinese leader after the Chinese crackdown on the Tibetan protest in 2008, Jose Manuel Barroso's articulation on the EU's position was subtle and moderate:

*"I have confirmed that the EU is attached to the territorial integrity and unity of China, and that naturally applies to Tibet."*²⁸⁸

By contrast, the European Parliament remains the only EU institution that voices its concerns on the political status of Tibet through consistently passing resolutions condemning China's occupation, largely responding to domestic concerns and Tibet support groups in Europe. In the early 1990s, there were resolutions passed in which the EP supported the Tibetans' right to self-determination based on UN resolutions. On occasions, contrary to the overall EU-China 'honey-moon' period leading up to 2003, the Parliament went as far as recalling Tibet's illegal invasion by China, and calling on the governments of the Member States:

²⁸⁷ 'Living with China', Speech by Peter Mandelson, EU Trade Commissioner, at the China-Britain Business Council, London, 15 April 2008.

²⁸⁸ 'EU considers Tibet part of China', *Agence France Presse*, Beijing, 25 April, 2008

‘...to give serious consideration to the possibility of recognising the Tibetan Government in Exile as the legitimate representative of the Tibetan people if, within three years, the Beijing authorities and the Tibetan government in exile have not, through negotiations organised under the aegis of the Secretary-General of the United Nations, signed an agreement of a new Statute for Tibet.’²⁸⁹

However, EP resolutions did not seem to be reflected in the positions adopted by other EU bodies and its member states.

In bilateral relations, although all member states formally insisted upon a clear-cut one-China policy, largely beholden to China’s economic influence and political pressure, the assertiveness in pressing and prioritizing Tibet on human rights agenda in their relations with China had far from been the same. Regarding the Big Three, although the official German position is committed to a one-China policy that rejected any separatist aims, Germany remains the most committed to what it views as ‘religions and cultural autonomy’ for Tibet. In 2007, German Chancellor Angela Merkel became the first German chancellor to meet with the Dalai Lama, even though Germany has long been the largest European trading partner with China.²⁹⁰ France also sticks to ‘the One China policy and her position that Tibet is an integral part of Chinese territory’ ever since General de Gaulle took upon the decision to object to ‘all support for Tibet’s independence in any form whatsoever’.²⁹¹ However, French President Nicolas Sarkozy struggled to deal with China without renouncing “European values”, especially when French ties with China were severely strained by Sarkozy’s meeting with the Dalai Lama in 2008.²⁹² The UK holds a special place amongst the big three, not just because its preference to deal with China bilaterally, rather than through European channels. Since 1914, Britain had been the only country who did not fully recognise China’s sovereignty over Tibet; instead it defined the idea of

²⁸⁹ European Parliament resolution on the Western China Poverty Reduction Project and the future of Tibet, B5-0608, 0610, 0617, 0621 and 0642/2000 (final edition), Thursday, 6 July 2000, Strasbourg; European Parliament resolution on a EU strategy towards China: Implementation of the 1998 Communication and future steps for a more effective EU policy (COM(2001)265-C-0098/2001-2001/2045(COS)), P5-TA(2002)0179

²⁹⁰ ‘Germany Calls for Direct Talks between Beijing, Dalai Lama’, *Deutsche Welle*, 15 March 2008.

²⁹¹ ‘France-China - Joint Communiqué’ issued by the French Ministry of Foreign and European Affairs and the Chinese Ministry of Foreign Affairs, 1 April, 2009, Paris

²⁹² ‘Sarkozy says he will not renounce “European values” on Tibet’, *Agence France Presse*, 12 December 2008.

autonomy for Tibet within the context of ‘suzerainty’.²⁹³ In October 2008 the British government changed this long-standing formal position:

*‘Our ability to get our points across has sometimes been clouded by the position the UK took at the start of the 20th century on the status of Tibet, a position based on the geopolitics of the time. Our recognition of China’s “special position” in Tibet developed from the outdated concept of suzerainty. [...] We have made clear to the Chinese Government, and publicly, that we do not support Tibetan independence. Like every other EU member state, and the United States, we regard Tibet as part of the People’s Republic of China.’*²⁹⁴

Overall, Member States might have subscribed to similar position on Tibet insofar as they recognise China’s sovereignty and territorial integrity yet differ in their willingness to meet the Dalai Lama and under what terms the meeting will take place, sometimes varying according to the particular national government. Thus, in the absence of an EU policy to address Tibet’s human rights problem, there has been no clear articulation of which international human rights norms underpin the EU’s concerns on the Tibet issue. From an NPE perspective, it seems impossible to identify a set of specific EU legal references that can be justified either as being European or universal.

5.3.1.2 Normative Interest

Reflecting on NPE, Manners looks into normative theory and suggests that interest can be distinguished between self and selfless interest (Manners 2009: 10). For Forsberg, if a state adopts normative rhetoric, and acts according to normative principles, then it has normative interests (2009: 5). When it comes to practical reality, it is argued that the EU’s foreign policy could not be exclusively based on normative concern, but is often intertwined with interest (Youngs 2004, Forsberg 2009, Aggestam 2009). In this chapter, I aim to demonstrate that the EU’s China policy regarding the Tibet issue is particularly pertinent to our understanding the inevitable but uneasy coexistence between normative

²⁹³ According to the Simla Convention, Britain recognised that “Tibet is under the suzerainty of China, and recognising also the autonomy of Outer Tibet”, and guaranteeing non-interference in the administration of Outer Tibet “which shall remain in the hands of the Tibetan Government at Lhasa”. However, despite initialling the draft, China did not sign or ratify the convention. See *Tibet: Human Rights and the Rule of Law*, International Commission of Jurists, December 1997, p.334

²⁹⁴ Written Ministerial Statement, David Miliband, the Secretary of State for Foreign and Commonwealth Affairs, 29 October 2008

and material interest.

In late 1990s, the EU began to realise the magnitude and speed of China's economic development as China was becoming one of Europe's major trading partners.²⁹⁵ Alongside this development is the tendency to publicly avoid the issue of Tibet as a priority on the EU's China policy agenda. When the EU unveiled its 2001 Strategy Paper on China, it stated that the EU should:

*'...promote its key interests in engaging China as a growing power by seeking positive and constructive solutions to major global issues, by contributing to improve the human rights situation in China, and by pursuing mutual commercial interests. [...] A comprehensive partnership between the EU and China, both bilaterally and globally, will serve both EU and Chinese interests, politically and economically, and help improve the lives of citizens in Europe and China.'*²⁹⁶

In the Commission's 2003 China Policy Paper on 'A maturing partnership –shared interests and challenges in EU-China relations', one of the priorities for the EU is "supporting China's transition to an open society based upon the rule of law and respect for human rights", however, the religious and cultural rights of 'ethnic minorities, notably in Tibet and Xinjiang' was mentioned as the last concern following the death penalty, freedom of expression, religion and association.²⁹⁷ On 25 April 2008, European Commission chief Jose Manuel Barroso, as the first Western high-level politician to visit China after the Tibet unrest, was under pressure from the European Parliament to press China to engage in a dialogue with the Dalai Lama. In fact, the two sides had other priorities on the agenda to divert attention from Tibet, such as trade friction, and exchange rates.²⁹⁸ For the EU Trade Commissioner, Peter Mandelson, modern China presents the EU with a real dilemma between EU material and normative interests. On Tibet, he believed that a direct confrontation with China:

'...would hurt the interests of ordinary Europeans and China, it is not possible

²⁹⁵ COM(98)181 final.

²⁹⁶ Ibid. p.20

²⁹⁷ COM (2003) 533 final.

²⁹⁸ 'Tibet issue to take back seat as EU-Beijing economic talks focus on old concerns', *South China Morning Post*, 25 April 2008

*to see how they would help. What we know for absolutely certain is that if we really want to shape the twenty-first century, we have to shape it with, not against, China.*²⁹⁹

A government-owned paper in China, *the International Herald Leader*, has attributed the EU's reluctance to boycott the Beijing Olympics in connection with Tibet in 2008 down to the global financial crisis:

*'[...] the financial crisis has made it impossible for them not to consider the "cost problem" in continuing to "aid Tibetan independence" and anger China. After all, compared to the Dalai, to as quickly as possible pull China onto Europe's rescue boat is even more important and urgent.'*³⁰⁰

Thus, it becomes increasingly clear that, regarding relations with China, the EU's interests can be both materialistic and normative. When it comes to mutual interest with China, they are mostly materialistic. On the issue of Tibet, the best way to define EU normative interest should be the interest of Tibetan people. However, these conflicting interests of EU dictate its ambiguous policy on Tibet in which concerns for Tibetans' interests are often reduced to paying lip service to human rights problems in general to their own domestic audiences.

5.3.1.3 Self-Binding Behaviour

Based on Manners' original idea (2002), Diez (2005: 636) suggests that 'self-binding' which refers to the EU's formal commitment to international, is a distinguishing feature of normative power. For Sjursen (2006b: 246), the EU can be considered as a normative power because of its 'strong emphasis on international law and multilateralism'. However, the complexity and controversial nature of the Tibetan case in relations to international law indicate that the EU's own back garden, at least in the eyes of the Chinese, would be subject to intense scrutiny in numerous normative grounds that China could use one set of norms to attack the EU over its commitment to others.

On issues mainly to do with state sovereignty and statehood, the EU's commitment to territorial integrity was tested in the case of former Yugoslavia. The right of Serbia-

²⁹⁹ 'Living with China', Speech by Peter Mandelson, EU Trade Commissioner, at the China-Britain Business Council, London, 15 April 2008.

³⁰⁰ Quoted in 'Did Britain Just Sell Tibet?', Robbie Barnett, *New York Times*, 24 November, 2008

Montenegro to protect its territorial integrity and prevent ethnic Albanians from declaring the independence of Kosovo was not supported by the EU member states, nor did the EU support the Bosnian Serbs' exercising of self-determination. For the EU, the NATO bombing of Yugoslavia was an action based on NATO allies' commitment to respond to a human rights disaster due to Serbia's arbitrary use of state violence by police forces against ethnic Albanians including ethnic cleansing. For the Chinese, having failed to report the ethnic cleansing in Kosovo to China's domestic audience, the NATO bombing was described as a human rights disaster.³⁰¹ Especially given three cruise missiles that hit the Chinese Embassy on May 6 1999, killing three Chinese embassy staff; Chinese official media portrayed Milosevic as a beleaguered hero and NATO as an evil imperialist giant, indicating Beijing's determination to keep its own minority issues away from any potential external interference.³⁰² Moreover, Chinese scholarship has drawn parallels in European experiences. For instance, in the cases of Turkish Cypriots, Northern Ireland of the UK, Corsica of France, the Basques of Spain, the Chinese scholars believe that the EU states have applied double standards on issues of sovereignty (Xu and Yuan 2006: 306-7). Furthermore, the EU also faces criticism over its poor record on ethnic minorities' rights, despite its legal commitment and advocacy of the UN Covenants and related law regarding these rights. In particular, that the EU limits rights of political asylum or turns back refugees has been increasingly subject to China's criticism when the issue of Tibet was raised by the EU during recently rounds of the EU-China human rights dialogue.³⁰³

Not only had China challenged the EU's commitment to international human rights norms, the Dalai Lama also expressed disappointment that Western leaders who defended sovereignty of Kuwait in 1991 – a challenge to international norms concerning the use of force, territorial integrity as well as human rights, but refused to support Tibet, in which according to the Dalai Lama, China was trampling on similar norms through invasion and

³⁰¹ 'China vents its fury at NATO's error: views and reaction from Beijing and beyond', *the Guardian*, 14 May, 1999, p.106

³⁰² 'Painting the town red: the first leader of the People's Republic of China to visit Britain will be greeted tomorrow by pomp and protest', Ian Black, *The Guardian*, 18 October 1999, p.3

³⁰³ See the Press Release by the Council, Press: 134, Nr: 9995/09, following the 27th round of EU-China Dialogue on Human Rights in Prague on 14 May 2009. Summaries of the 24th and 28th rounds of human rights dialogue (17/10/2007 and 24/11/2009) which also mentioned China's counter-arguments are available on the respective Presidency countries' websites at <http://www.eu2007.pt/UE/vEN/Noticias_Documentos/20071017UEChina.htm> and http://www.se2009.eu/en/meeting_2009/11/24/eu-china_dialogue_on_human_rights, [accessed 10 Feb.2010]

occupation:

*“At least Iraq and Kuwait had many similarities in culture and in religion, whether Saddam Hussein practised it or not. The Iraqis didn’t attack Kuwait’s religion. We Tibetans have more cause to complain – our culture is completely different from China’s and our invaders were Communists and therefore anti-religious. President Bush and Prime Minister Major express serious feelings about human rights violations and atrocities in Kuwait. I welcome that. But the occupation there lasted only a few months. What the Chinese have done in Tibet, for 35 years in one place or another, is also an atrocity.”*³⁰⁴

In addition, the Dalai Lama often referred to the Baltic States as a real similarity with Tibet – both being different cultures from the invaders and a long occupation, for which Tibet deserved the same response in the West in principle.³⁰⁵

5.3.1.4 Virtue Ethics

The first part of the tripartite analysis on the Tibetan case examines the relevant principles of the EU, and how they are related to the aims and objectives of the EU’s positions on Tibet. As discussed above, there have been several principles, either directly from EU law or embedded in international law, which are being subscribed to by different EU bodies over time in framing their responses to the situation in Tibet. In discussing normative power, Manners (2008: 54) suggests that in their pursuit of external actions, the EU and its member states are guided by their moral characters or traits, according to virtue ethics. Therefore, it is a question of whether the EU’s positions on Tibet had reflected the principles it constituted and applied in other cases. In other words, this path to judging the EU is to ask whether the EU is “living by virtuous example” (Manners 2008: 56).

First of all, in the internal dimension, the EU institutions and its member states did not uphold the same normative agenda in pressing for and prioritising Tibet’s human rights problem in its relations with China. The ambiguity and disunity derived from 1) the kind of human rights norms that they chose to frame the Tibet question without an EU-level strategy to articulate their European or international legal bases; 2) the weight that different

³⁰⁴ ‘Dalai Lama pleads for Western toughness to save helpless Tibet’, *The Observer*, 17 March 1991, p.13

³⁰⁵ ‘Tibetans discover new sympathisers’, Jasper Becker, *The Guardian*, 3 May, 1990, p.8

EU institutions and Member States placed on human rights in their China policies, due to the conflicts between self-interest and promoting human rights, and between materialistic and normative considerations; 3) promoting human rights sits uneasily with other EU foreign policy principles: multilateralism and international cooperation with China as in this case; 4) failure to recognise China's sensitivity to Tibet, and to realise the complexity of the Tibet question in its historical, political and legal aspects in the early 1990s. Therefore, that the EU's adherence to human rights principles are laid down in international law is not enough to conclude that the EU has demonstrated a normative identity or moral character in the case of Tibet. The lack of policy coherence in this case has severely undermined normative power of the EU in which a shared EU normative basis could have been better articulated with assertiveness and clarity.

Secondly, in the external dimension, the EU's credibility in promoting norms in the case of Tibet has been criticised from both China and the TGIE. In the clear absence of an EU special representative for China/Tibet, no EU body had the mandate to speak with one voice to the Chinese or the Tibetan exiles on behalf of the EU. With their respective positions on Tibet, neither China nor the TGIE considered that the principles of the EU's approach on Tibet had provided a basis for its foreign policy elsewhere. Meanwhile, the EU was not prepared to prioritise the Tibet issue in EU-China relations at all cost, nor could it ignore the verdict established by international lawyers and NGOs reports that Tibet's right to self-determination was denied and human rights were grossly violated by the Chinese. As the mutual interests grow between the EU and China, the EU's ability to sustain a consistent policy towards Tibet is further undermined by the need to seek partnership and cooperation with China for greater economic and strategic interests.

5.3.2 Normative Action

The events in Tiananmen Square in the spring of 1989 provided the world with powerful images that severely undermined Beijing's reputation, and in a way enhanced the Dalai Lama's profile, especially in the West. The most immediate consequence was the awarding of the Nobel Peace Prize. It was felt in West as well as in China that the choice of the Dalai Lama was an attempt to both influence events in China and to recognise the efforts of the student leaders of the democracy movement (Grunfeld 2006: 337, Zhang 1994: 145). In the early 1990s, the EC/EU had toughened its rhetoric and explored means that could be

effectively used to address the issue of Tibet. Such instruments include raising concerns in the high-level contacts with the Chinese counterparts in international forums (e.g. the UN General Assembly and the Commission on Human Rights), issuing statements, parliamentary hearings, and the resolutions concerning individual cases and sending EC delegations of the Troika ambassadors to visit Tibet.

In the case of Tibet, as I conclude in the previous section, the specific human rights norms the EU stands for have varied over time and remain ambiguous. Therefore, instead of emphasising the independent power of norms, the selection criteria of normative action will be focusing on the nature of normative power projection, in other words, whether it is done in the absence of physical force or coercion. As with the previous chapter, I illustrate how five diffusion mechanisms drawn from Manners (2008) and Forsberg (2009) can be used to help us understand how NPE works in the case of Tibet. With the EU's internal divisions in mind, I ask a number of questions: 1) how consistent the EU was in pursuing certain policies; 2) whether the different EU institutions and member states seek for a common approach or pursue their own agenda; 3) what does deontological ethics tell us about persuasion instead of coercion, or engagement instead of confrontation, when these normative actions are often associated with political weakness?

5.3.2.1 Persuasion and Argumentation

The way NPE promotes principles through persuasion and argumentation can be translated into policy actions such as constructive engagement, institutionalisation of relations, encouragement of dialogue between participants, and the use of eloquent rhetoric (Manners 2009a: 12; Forsberg 2009: 16). In this case study, EU Troika visits in Tibet, inter-parliamentary dialogue/delegation visits, and EU-China human rights dialogue sit well within this group.

- *EU Troika Visits to Tibet*

Responding to the military crackdown in Lhasa in March 1989, the first delegation of Troika ambassadors and European Commissioner Martin Bangemann expressed the Twelve's concern to the Chinese government over the situation in Tibet, but no further

action was taken.³⁰⁶ Since then, Troika visits had been part of the negotiation package on the human rights dialogue since it was first launched in 1995. For instance, in 1996, the Italian Foreign Minister Lamberto Dini undertook a visit to China with a group of Italian businessmen. When he met with the Chinese leaders, he reportedly asked for China's permission to allow an EU Troika delegation to visit Tibet. Without speaking in EU official capacity during the Irish Presidency, he indicated the Chinese authorities that if this proposed visit identified progress in human rights in Tibet, it might alter the EU member states collective position on the annual resolution at the UNCHR. As a result, this Toika mission did take place (Lim 2003: 303, quoted by Kinzelbach 2010: 43). Although the report that resulted from this visit was not available in the public domain, the EU did abandon its annual support of a resolution at the UN in 1998. Meanwhile, allowing future Troika visits to Tibet was one of the concessions negotiated as part of the political deal when it was formally undertaken as part of the EU-China human rights dialogue which was resumed in 1998 (Kinzelbach 2010: 72). To this end, conducting an assessment on human rights based on fact-finding was the primary purpose of the mission in Tibet in May 1998.³⁰⁷

However, given its confidentiality and China's close supervision throughout the visit including all interviews, the actual process of the fact-finding can hardly be independent.³⁰⁸ Moreover, it does not provide an open system for effectively engaging China on Tibet. Especially during the negotiation period leading up to the EU's decision to abandon co-sponsoring a resolution critical of China's human rights record at UNCHR in 1998, a permit for the EU Troika to visit Tibet was no more than a symbolic political gain to cover its concession over a more assertive form of pressure.

- *Inter - Parliamentary Dialogue and Delegation Visits*

Unlike other EU institutions, the European Parliament was most readily taking up a leading role in discussing a peaceful solution to the Tibet question, and condemning the deterioration of the human rights situation in Tibet. For this reason, Li Peng, Chairman of the Standing Committee of the National People's Congress (NPC) had invited the EP

³⁰⁶ Bull.EC 3-1989, Point 2.2.21

³⁰⁷ *EU Annual Human Rights Report (1998/9)*, Council of the European Union, p.21

³⁰⁸ 'China launches attack on Dalai Lama prior to Clinton Meeting', Conor O'Clery, *Irish Times*, 27 June, 1998.

Delegation to conduct a few ‘on-the-spot observations’ between 2000 and 2002, in the spirit of ‘seeking common ground in areas of contention through better understanding and more dialogue as equal partners’.³⁰⁹

The results of such visits often led to no concrete policy actions being extended, and the reporting of these events had been carefully orchestrated by Chinese officialdom to ensure a sophisticated display of propaganda. For instance, when Chairman of the EU Group for Relations with PRC, Per Gahrton, headed the EP Delegation to visit Beijing on 29 October 2000, he was reported to have said to the Chinese counterparts, according to Chinese State Media, that:

*“The EU and the EP adhere to a one-China policy. [...] The European people are very interested in the situation in Tibet. Meanwhile, we also know that Tibet was an extremely dark slave society before the democratic reform, and such history should not be repeated. It is also a fact that enormous changes have taken place in Tibet, and we hope to know more about the current situation in Tibet and the Chinese government’s policies towards Dalai Lama.”*³¹⁰

Just one year later, acting in accordance with a 2000 EP resolution³¹¹, Per Gahrton³¹² issued an open letter to the European Council and the Commission on 7 September 2001 during the EU-China Summit, in which he called on these two institutions to communicate to Chinese Premier Zhu Rongji that:³¹³

“If no solution to the Tibet issue has been implemented by June 2004 at the latest,

³⁰⁹ ‘China’s top lawmaker stresses ties with European Parliament’, *Xinhua News Agency*, Beijing, 8 July 2002

³¹⁰ ‘Li Peng meets EU delegation, discusses Sino-EU cooperation, Tibet issue’, *Xinhua News Agency*, Beijing, 30 October, 2000

³¹¹ European Parliament resolution on the Western China Poverty Reduction Project and the future of Tibet, B5-0608, 0610, 0617, 0621 and 0642/2000 (final), Thursday, 6 July 2000, Strasbourg; European Parliament resolution on the Commission communication to the Council and the European Parliament on a EU strategy towards China: Implementation of the 1998 Communication and future steps for a more effective EU policy {COM(2001)265-C-0098/2001-2001/2045(COS)}, P5-TA(2002)0179

³¹² Although members of opposition parties could be overtly critical, but on the issue of Tibet and China’s human rights problem in general, such view is largely shared across the political spectrum in Sweden. For details of Swedish domestic discussion on promoting human rights towards China, see HRIC (1998), pp.39-45.

³¹³ ‘Open letter to the European Council re: China EU summit’, Per Gahrton, Chairman of the European Parliament’s Delegation for Relations with the PRC, 7 September 2001, Brussels.

the EU countries will consider recognising the Tibet government in exile!"³¹⁴

Events as such would inevitably lead to deeper mistrust and obstacles for future cooperation between both sides. As the EP continued to respond to human rights problems in Tibet through passing strong-worded resolutions, inter-parliamentary dialogue had not been resumed until 2008, the year when the Tibet issue was brought back to the forefront of world's attention due to the unrest in March and the Beijing Olympics. This time, under the invitation of Li Changchun, member of the Standing Committee of the Political Bureau of the CCP Central Committee, the EP Delegation was made up of the European People's Party and European Democrats (EPP-ED) led by chairman Joseph Daul. During the meeting, Li briefed the members of delegation with "facts and figures elaborating Chinese governments' great efforts on promoting economic and social development in Tibet, preserving its culture and tradition, as well as improving education and living conditions for Tibetan people." Thus, it was impossible for EU delegation members to conduct any independent research, as information was selectively presented and the itinerary planned by their Chinese hosts. And unsurprisingly, it again finished with Joseph Daul praising China's achievements and suggesting the EU and China would continue to engage in such exchanges and cooperation in the future.³¹⁵

When China cancelled its regular summit with the EU in December 2008 in protest at the decision of the French President Nicolas Sarkozy to meet the Dalai Lama, there had been limited high-level contacts between the EU and China. In September 2009, the European Economic and Social Committee (EESC) became the first EU institution that sent an EU delegation to visit Tibet since the unrest of March 2008. According to the EESC President Mario Sepi, the purpose of the visit was "to increase our knowledge of the social and economic conditions of the TAR, in order to develop possible fields of cooperation between our civil societies, and to deepen the activities of the EU-China Round Table".³¹⁶

³¹⁴ Through comparing the Chinese official media accounts with EU official documents and media reporting, I often discovered that the Chinese news reporting deliberately rendered the original remarks of EU officials in order to correspond with Chinese official line, through deceptively cutting and editing original contents, or sometimes even fabricating evidence. The case about Mr Per Gahrton is just one example of many cases.

³¹⁵ 'CPC leader calls for bigger role of EU party groups in China-EU ties', *Xinhua News Agency*, 29 April 2008

³¹⁶ President Sepi Declaration on the EESC mission to Tibet, available at <http://europa.eu/rapid/pressReleasesAction.do?reference=CES/09/117&format=HTML&aged=0&language=en&guiLanguage=en>, [access 10 Jan. 2010]

Since the EESC had no political remit, central to its agenda was economic development. President Mario Sepi was reported to have found that: “China is experiencing a Mezzogiorno, with Tibet, like Southern Italy, struggling to achieve economic autonomy.”³¹⁷ As a result, China’s ambassador to the EU praised this mission as a ‘success’.³¹⁸ The Human Rights Group ICT welcomed it as an “important indication of a commitment to engage seriously with the situation in Tibet”.³¹⁹ An additional official mission of the EESC represented by Mr Peter Clever was sent to Dharamsala one month later, and received by the Dalai Lama.³²⁰

The EU delegation sent by the EESC appeared to demonstrate that it was possible for the EU to find a way to address its concern over Tibet and be welcomed by China, NGOs and Tibetans in exile at the same time. In fact, sending a low-profile body with only a consultative brief to be the first to visit the most politically sensitive area of China at a time of crisis, demonstrated that the EU can be skilful in balancing conflicting interests in relations with China.

- *Human Rights Dialogue*

Besides parliamentary exchange and troika visits, the EU-China human rights dialogue constitutes a long-term and regular forum for the EU to raise its concerns regarding Tibet. Since 1998, the human rights problems in Tibet had been mentioned in numerous sessions of the EU in human rights dialogue under various terms and categories, from ‘the situation in Tibet, including the “patriotic education campaign”’³²¹, ‘the rights of minorities, including in Tibet’,³²² ‘treatment of refugees and minority rights, including in Tibet and Xinjiang’,³²³ to ‘respect for cultural rights and religious freedom’.³²⁴ While establishing aims and objectives for the dialogue approach, Tibet was situated alongside Xinjiang, within ‘respect for cultural rights and religious freedoms’ as one of the eight benchmarks

³¹⁷ Ibid.

³¹⁸ ‘Assessments and recommendations on Tibet, Sub-Committee on Human Rights’, *International Campaign for Tibet*, 1 December 2009

³¹⁹ Ibid.

³²⁰ ‘Tibet’s problems similar to southern Italy: EU delegate’, *Agence France Presse*, 18 September 2009

³²¹ *EU Human Rights Report 1998/9*, p.29; *ibid.*, 2000, p.29;

³²² *EU Annual Human Rights Report 2001*, p.42; *ibid.*, 2006, p.36; *ibid.*, 2007, p.21

³²³ *EU Annual Human Rights Report 2002, 2003*

³²⁴ *EU Annual Human Rights Report 2004*, p. 44; *ibid.*, 2005, p.120; *ibid.*, 2008, p.30

agreed with China.³²⁵

On 15 May 2008, during the 25th dialogue meeting in Brdo, Slovenia, special attention was given to questions related to freedom expression, the rights of person belonging to minorities, in particular in Tibet. While the EU voiced ‘grave concern’ regarding the situation in Tibet following the 14 March event, China simply reiterated its customary position on the situation in Tibet as it did before, including the role of the Dalai Lama, and China’s position on further talks.³²⁶ China’s reluctance to change its rhetoric and policy on Tibet led to the Parliament’s Report on Human Rights 2008 to call for “the need for a radical intensification and rethinking of the European Union-China human rights dialogue”.³²⁷

Considering the lack of progress and the intensification of political repression and crackdowns on dissidents and minority groups since late the 1990s, human rights groups such as Amnesty International and International Campaign for Tibet, and TGIE had repeatedly called upon the EU to reclaim the initiative to sponsor a resolution against China at the forthcoming UNCHR, fearing the effectiveness of the dialogue approach would be compromised if other forms of pressure were abandoned.³²⁸

5.3.2.2 Invoking Norms

Invoking norms is about the EU activating commitments to which the target country subscribed itself (Forsberg 2009: 17). In the Tibetan case, when China failed to adhere to international agreements to which it is a party, the NPE worked as it invoked the contravention of commitments to Tibet under international law. Policy instruments at the EU’s disposal in this case were most readily associated with the EP resolutions, declarations or démarches.

In the early EP resolutions in the 1990s, the Tibet problem was considered by the

³²⁵ *Evaluation of the European Commission’s Co-operation and Partnership with the People’s Republic of China*, *ibid.*, p.85

³²⁶ *EU Annual Human Rights Report 2008*, p.31

³²⁷ *Human Rights in the world 2008 and the EU’s policy on the matter*, European Parliament, 7 May 2009

³²⁸ ‘EU under pressure to mount protest’, Simon Macklin, *South China Morning Post*, Hong Kong, 10 February 1999; Tibet government in exile asks EU to review human rights decision’, *Agence France Presse*, 26 February 1998

Parliament as an issue of violations of individual human rights as well as denial of the right to self-determination. However, China at the time was subject to only a very limited body of international law, and those which could have been considered as legal ‘contravention of commitments to Tibet under UN conventions’ only included two second-generation human rights instruments: 1) *The Convention on the Elimination of All Forms of Racial Discrimination*; 2) *The Convention against Torture and other Cruel and Inhuman or Degrading Treatment and Punishment*.³²⁹ On the other hand, the International Bill of Rights which provides legal provisions for fundamental human rights and the right to self-determination was not legally binding to China, even though it enjoys the stature of ‘customary international’.³³⁰ Similar legal effect applies to the three UN resolutions passed in 1959, 1961 and 1965 which acknowledge Tibet’s right to self-determination and were often cited in EP resolutions during the 1990s.

Until China had finally signed the ICCPR in 1998 and ratified the ICESCR in 2003, self-determination as a fundamental principle enshrined in these two Covenants was no longer on the EP’s normative agenda regarding the situation in Tibet. Instead, the human rights problem of Tibet was framed in several categories, most often religious freedom and rights of ethnic minorities. As a result, the EU had to rely on invoking individual legal provisions, for instance *Article 18* of freedom of religion under the UNDHR,³³¹ rather than several UN Conventions that would all be relevant to the same issue. Ironically, while a large number of legal instruments became irrelevant to the EP’s position on Tibet, the political status of Tibet and human rights problems had unabatedly persisted over the years if not become worse.

Besides international law, ‘invoking norms’ as a type of norms diffusion also applies to other EU institutions who had signed up agreements with China. In its report on “the implementation of the Communications: Building a comprehensive partnership with China”, which was endorsed by the General Affairs Council in its conclusions on 22 January 2001, the Commission concluded that China’s human rights situation, as far as the

³²⁹ Report of the Committee on Foreign Affairs and Security on the Situation in Tibet, by Rapporteur Mr Jannis Sakellariou, European Parliament, A3-0369/92, 16 November 1992, p.17

³³⁰ Ibid., p.17

³³¹ OJ B5-0106,0116,0124,0142 and 0145/2001, Human Rights: Religious freedoms in the People’s Republic of China, 15 February 2001, Strasbourg

‘comprehensive partnership’ is concerned, had worsened with regard to respect for civil, political and religious rights.³³²

Finally, there was a tendency in deploying démarches and declarations for the EU to prioritise individual cases, which violated norms that were deemed fundamental to the EU moral order. This is certainly the case when it comes to the death penalty. Almost all the individual cases that involved death sentences or execution of Tibetans had been issued with démarches, declarations or/and resolutions.³³³ On 27 October 2009, China executed two Tibetans for their role in the ethnic unrest in March 2008. The European Union had previously called for death sentences to be commuted on several Tibetans allegedly involved in this violent event through issuing démarches and adopting EP resolutions. Eventually, in the statement issued by the Swedish EU presidency:

*‘The European Union condemns the recent executions of two Tibetans, Mr Lobsang Gyaltsen and Mr Loyak. The EU respects China’s rights to bring those responsible for the violence to justice but reaffirms its longstanding opposition to the use of the death penalty under all circumstances. The EU reiterates its concerns about the conditions under which the trials were conducted, especially with regard to whether due process and other safeguards for a fair trial were respected.’*³³⁴

The Chinese Foreign Ministry Spokesperson Ma Zhaoxu expressed strong dissatisfaction with the EU statement and replied:

*China strongly opposes the practice of interfering in other’s internal affairs under the pretext of the death penalty issue. We urge the EU to earnestly abide by the principle of equality and mutual respect and refrain from sending wrong signals to the separatist forces for “Tibetan Independence”, with a view to promoting the healthy and stable development of China-EU relations.’*³³⁵

³³² COM (2000) 552 final.

³³³ Parliament resolution on ‘Tibet, the case of Tenzin Delek Rinpoché: OJC 201 E, 18.8.2005, Bull 10-2005, point 1.2.2

³³⁴ ‘EU denounces China’s execution of two Tibetans’, *Agence France Presse*, Brussels, 29 October 2009

³³⁵ ‘Foreign Ministry Spokesperson Ma Zhaoxu’s Remarks on the EU Statement Denouncing China’s Execution of Lhasa March 14 Incident Criminals’, *Press Release*, Ministry of Foreign Affairs of the People’s Republic of China, 2 November 2009.

Therefore, whenever the EU tried to activate commitments China subscribed to, either referring to international law or its domestic laws, China would not recognise or reciprocate when it came to Tibet, let alone making concessions or compromise. As I illustrate in *Section Two*, international legal remedies had failed to address the Tibet question since China based its positions on norms such as absolute sovereignty. The norms that underpin the EU's discourse on Tibet, however, hold no normative power over China, simply because China perceives no legitimacy of the Union's action.

5.3.2.3 Shaping discourse

For Manners (2002: 239), normative power has the ability to shape discourses through learning, adaption or rejection of norms as a result of international norms and political learning by third countries. In the case of Tibet, this type of norm diffusion did occur in the early twentieth century, as the Chinese learnt the modern European diplomatic language to assert their relationship with Tibet in terms of sovereignty (Anand 2002: 8). Since the late 1980s, the West learned quickly to adopt human rights discourse to publicise the Tibetan cause. To that end, China's response to EP resolutions has always been assertive and consistent over the years, as China both resolutely and customarily rejects anything that might suggest the Tibet issue is more than a domestic issue, thus leaving no space for any external attempts to shape China's response.

In view of EP resolutions from 1987 to 2009, at least two trends can be identified in its discourse on Tibet. First of all, the range of issues that were initially under the EP's radar has been reduced mostly to individual cases in recent years. In the early 1990s, the Parliament had passed resolutions addressing both Tibet's situation in general and individual cases. It detailed the Parliament's concerns on human rights abuses, including self-determination, population transfer and birth control policy, culture and religion, language, history, ecology, economy and health and hygiene. Regarding status of Tibet, the Parliament both looked into China's violations of international law and inadequacy of Tibet's legal autonomy.³³⁶ Individual cases, in which the Parliament was 'deeply disturbed' by the heavy sentencing of Tibetans for 'counter-revolutionary activities'³³⁷ and 'appalled'

³³⁶ *Report of the Committee on Foreign Affairs and Security on the Situation in Tibet*, by Rapporteur Mr Jannis Sakellariou, European Parliament, A3-0369/92, 16 November 1992, p.17

³³⁷ OJ No.C 323/168, 21.11.1994

at the disappearing of the six-year old Panchen Lama³³⁸, were condemned in strident language. Whereas from 1998 to 2009, seven out of all nine Parliament resolutions were devoted to individual cases, five of which addressed just one extremely grave case regarding the death sentence of a Buddhist Lama, Tenzin Deleg Rinpoche.³³⁹ Moreover, since late 1990s, the situation in Tibet no longer stood alone as an issue of concern in EP resolutions. Instead, it had been incorporated either as part of the human rights situation in China, particularly alongside Xinjiang, as China's repression of ethnic minorities and religious freedom³⁴⁰; or the use of the death penalty on ethnic Tibetans for political crimes.³⁴¹

On 15 May 1998, Foreign Ministry spokesman Zhu Bangzao responded to the two emergency resolutions adopted by the EU on 14 May, in which the European Parliament called on the EC to appoint a special representative on Tibet:³⁴²

*Tibet issues are purely China's internal affairs, and no foreign government, organization, or individual has the right to interfere with them. The above EU resolutions are serious encroachment on China's sovereignty and gross interference in China's internal affairs. The Chinese government and people will resolutely oppose them. [...] The EU moves have poisoned the atmosphere of Sino-European ties and completely run counter to trends of times and development. We hope that the EU will truly take a responsible stance and will not obstruct the development of Sino-European ties.*³⁴³

Reacting to EP resolutions, Chinese official media preferred to criticise 'some parliamentarians' than the EU or the EP, for 'amnesia concerning Europe's history and their ignorance of the Chinese autonomous region's current situation'. While considering certain unnamed parliamentarians should be blamed for their 'anti-China' attitude which 'severely harmed the interests of the Chinese people', those who were willing to challenge

³³⁸ OJ No.C 249/162, 13. 7.1995

³³⁹ OJ C201E, 18.8.2005; OJ C247 E, 6.10.2005; P6_TA(2005)0150, PA_TA(2005)0416, P6_TA(2004)0067

³⁴⁰ B5-0106, 0116, 0124, 0142 and 0145/2001

³⁴¹ B5-0050, 0064 and 0083/2000; B5-0126, 0127, 0129 and 0139/2000; B5-0343, 0353, 0361, 0369, 0373 and 0377/300; P5_TA(2002)0632

³⁴² Bull. EU 6-1997, point 1.1.5, Parliament resolution on the sale of organs of persons sentenced to death in China, OJ C 167, 1.6.1998

³⁴³ 'Chinese spokesman slams EU resolutions on Tibet, organ selling', *Xinhua News Agency*, Beijing, 15 May 1998.

the prevailing views against China on Tibet, according to an official Chinese source, were sufficiently represented, too.³⁴⁴ Nevertheless, majority of Chinese sources on ‘pro-China’ parliamentarians cannot be verified with EU official documents or European media reporting.

The Commission initiated the Panam project - the first and only EU project directly delivered in Tibet in 1995. The Chinese government agreed to engage with this aid project for its very nature as a non-political aid programme. Initially designed to serve the economic interests of Tibetan population in rural Tibet, it was later suspended as the EP and human rights groups had concerns over its implementation problems, such as an increasing number of new Chinese settlers were among the beneficiaries through this project and delays to do with China’s strict control over human rights NGO’s participation.³⁴⁵

According to the Commission’s first Communication in 1998 on ‘Building a Comprehensive Partnership with China’, the EU ‘attaches great importance to the respect for the cultural, linguistic and religious identity of ethnic minorities’ on issues relating to Tibet.³⁴⁶ At the time, this EU position was manifested by raising the Tibet issue within the newly-established bilateral dialogue on human rights. In its updated version in 2003, the question of Tibet was only mentioned once in the context of ensuring a genuine autonomy for this region through encouraging China and the Dalai Lama to engage in dialogue.³⁴⁷ Since then, Tibet has not been mentioned in the Commission’s policy papers. In April 2008, the Commission’s President Jose Manuel Barroso led a large EU delegation on a visit to Beijing amid tension over China’s crackdown in Tibet and the calls for boycotting the Beijing Olympics. As much as he wanted ‘positive development soon’ on Tibet after talks with China’s Premier Wen to whom he reiterated the EU position on Tibet, Barroso deflected calls for a boycott of the opening ceremony of the Games by some other

³⁴⁴ ‘Commentary: Amnesia, ignorance of some European Parliamentarians’, *Xinhua News Agency*, 14 March 2009

³⁴⁵ The European Parliament Resolution on Tibet, No C 151/278 (d) B4-0768 and 0826/95. According to this resolution, the Commission ‘did not adequately consult either the local population or special interest group with extensive expertise of development work in Tibet as demanded by the Commission’s own policy of open and structured dialogue with such special interest group’.

³⁴⁶ COM(1998) 181 final, *ibid.*, p.10

³⁴⁷ COM (2003) 533 final

European leaders.³⁴⁸ While political analysts believed that they would eventually agree to disagree, Chinese state media reported that the purpose of Barroso's visit was to mend the fissure after the EU-China relationship had "soured" over Tibet.³⁴⁹

The abovementioned patterns of development in the EU's response to Tibet can be understood as accommodation and adjustment to its relations with China, in view of its normative agenda regarding which international standards to be upheld. However, the balance between open criticism and private diplomacy is not always easy to strike. As China's economy grew, so did the mutual interests between China and the EU. An ambiguous human rights language might be easy for the EU to pay lip service to, as the European domestic audience would see EU criticisms on China in both words and deeds. However, when China firmly insisted upon the principle of non-interference over its domestic affairs with regard to Tibet, the EU's criticisms of gross human rights violations in Tibet, however strong or mild, have been proven ineffective. Therefore, with a reduced scope of norms under concern and a focus on individual cases, one can argue that the EU's human rights discourse on Tibet has become a more defined but overall weaker position. Therefore, instead of shaping China's discourse, the EU's discourse on Tibet ended up being shaped by China's non-negotiable position, the need to encourage the process of engagement and dialogue with China, and the dilemma between the EU's sympathy towards the Tibetans and its economic interests with a strategic partner.

5.3.2.4 Living by Example

According to Manners (2002, 2006c, 2008), since the notion of NPE is essentially about what the EU is, rather than what it does, 'living by example' might be the most important element of normative power. To that end, the source of normative power comes from the independent power of the norms itself, without the EU engaging in policy action. Forsberg (2009: 18) adds that the power of attraction implies a positive sense of learning, which is another form of norm diffusion mechanism. In this section, I briefly look into the implications of Kosovo's domino effects on Tibet's political status and the Baltic analogy for a peaceful resolution for Tibet. The former is perceived as an example by the international legal community for the future of Tibet's political status, and by the Chinese

³⁴⁸ Bull.EU 4-2008, point 1.35.35

³⁴⁹ 'EU chief says wants "positive" news soon on Tibet', *Agence France Presse*, 25 April 2008.

government as a negative example of the West trampling state sovereignty in the name of humanitarian operation. The latter represents what the Tibetan exile leader, the 14th Dalai Lama have anticipated where the future of Tibet is held, and the kind of support he expected from Western governments.

- *Kosovo's domino effects*

The military intervention in Kosovo by the NATO forces made China extremely uncomfortable in 1999, as it too has regions - Tibet and Xinjiang – where ethnic groups have been seeking independence from Chinese rule. Fearing Tibet would become an Asian Kosovo, the Chinese foreign ministry's response to the NATO intervention was predictable, as China 'opposed interference in other nations' internal affairs no matter what the excuse or by what means and particularly opposed any random actions that circumvents the UN'.³⁵⁰ Chinese President Jiang Zemin reportedly blamed Western power for escalating the ethnic tensions by encouraging "terrorist" Albanians.³⁵¹ Domestically, China kept its media from reporting on ethnic cleansing of Albanians, and painted Milosevic as a patriot and hero, whilst 'the US-led NATO' an imperialist hegemon.³⁵² In 2008, Tibet's political status was given renewed attention by the independence of Kosovo. As demonstrated in *Section Two*, the right of Tibetans to self-determination is strong, and arguably stronger than Kosovo.³⁵³

For Dickinson (2009: 15), 'if the Kosovan example is applicable to Tibet, Tibet should find support in the international community for a claim to similar independence; [...] Law has the potential to create the reality of an independent Kosovo and, consequently Tibet'. Chinese scholars, on the other hand, defended China's official position by accusing the Western powers of holding self-contradictory double standards on the issue of human rights, self-determination and sovereignty in international affairs. And they too, like Western scholars, point out the tension between the competing rights of territorial integrity of the state and the rights of peoples to self-determination which is also guaranteed under international law (Xu and Yuan 2006: 306).

³⁵⁰ 'Russia and China lead international protest', *The Guardian*, 26 March 1999, p.2

³⁵¹ *Ibid.*, p.2

³⁵² *People's Daily*, Beijing, 11 May 1999, in 'Trampling on China's fears', *The Guardian*, 13 May 1999, p.19

³⁵³ 'Tibet has stronger self-rule case than Kosovo', Paul Harris, *Financial Times*, 8 May 2008.

- *The Baltic analogy*

In Eastern Europe, especially among countries such as Latvia, Lithuania and Estonia, who recognise their own struggles for self-determination as mirroring that of the Tibetans, it is not surprising that after the Dalai Lama won the 1989 Nobel Peace Prize, he had been formally received by many Eastern European countries for years.³⁵⁴ According to the TGIE's Foreign Minister, Mr Lodi Gyari:

*'The response has been unexpected. People in the West do not know what freedom and democracy is because they never lost it but in East Europe they understand our language, they know what it is when we talk of persecution. They know the colonialism is not something committed only by Western countries.'*³⁵⁵

As for the Baltic analogy, the former UN Secretary-General, Mr Boutros Boutros-Ghali felt that the Tibet case is also stronger than the Baltic Republics' case. He argues that Tibet has a more credible leadership that has effectively communicated the moral and political foundation of its claims to self-determination (Falk 1994: 94). In addition, since the Dalai Lama is the only leader of a self-determination movement and recipient of the Nobel Peace Prize, he had already gathered wide support from the international community. Chinese scholarship, on the other hand, carefully studied the implications of the collapse of Soviet Union in relation to the independence of the Baltic States, and believed that they could potentially have impact on Tibet's independence movement (Zhang 1994). Unlike the Soviet Union, the reason why the Chinese Communist Party did not fall to the wave of democratisation orchestrated by the West, lies in the government's successful economic reform and China's ethnic minority problems being sufficiently mild. Therefore, in case Tibet followed in the footsteps of the Baltic States, the Chinese government was advised: 1) to consolidate the CCP's leadership; 2) to ensure equality and solidarity among all nationalities; 3) to stimulate faster economic growth in ethnic autonomous regions; 4) to facilitate patriotic education in ethnic autonomous regions; 5) to crackdown splitist movement; 6) to unveil the historical truth to the world; 7) to stay alert against the threat of external anti-China forces (Zhang 1994: 224-254).

³⁵⁴ Unlike 1990s, the Baltic States as member states of the EU, rely almost completely on the EU position on China issues. See 'A Power Audit of EU-China Relations', Fox, J and Godement, Francois (2009), p. 27

³⁵⁵ 'Tibetans discover new sympathisers', Jasper Becker, *The Guardian*, 3 May, 1990, p.8

In the early 1990s, the Dalai Lama frequently made optimistic statements about Tibet's future following the independence of the Baltic States, appealing to the Western governments to treat Tibet as they did with the Baltic States.³⁵⁶ According to the Dalai Lama:

*'Here there is a real similarity with Tibet – different cultures from the invaders and a long occupation. And in the West they have taken a good stand on this. Doesn't Tibet deserve at least the same response? [...] The fear of China is unnecessary. Western nations are far from China; there is no physical threat – yet they are over-cautious. What the Chinese respect is firmness.'*³⁵⁷

Speaking to the European Parliament's Foreign Affairs Committee on 31 May 2006, the Dalai Lama pointed to Scotland and the Canadian province of Quebec for examples of regions where the degree of autonomy was desired over independence.³⁵⁸

5.3.2.5 Shaming

For Foot (2001: 10), states are capable of being shamed when they concern about reputation as a non-material cost, to that end, disapproval from other members of the normative community matters. Manners (2009a:12) broadly defines shaming as public condemnation in multilateral fora or the use of symbolic sanctioning. Traditionally, raising China's human rights problem through sponsoring a resolution at the UNCHR is the major form of shaming in the case of China. On Tibet, by increasingly resorting to public criticisms in recent years, the European governments have found a less costly way to address Tibet's human rights problem, both politically and economically.

For the supporters of the Tibetan cause in the West, the event of 2008 Beijing Olympic Games was used as a platform to give more publicity to the Tibetan question. It was described by Thomas Mann, Chairman of the EP's Tibet Inter-Group, as a strategy to 'keep our eye on the ball'.³⁵⁹ For China, the Beijing Games would allow China to symbolically declare an end to 150 years of national humiliation, that began with the Opium War, the subsequent collapse of the Sino-centric world, and the brutal exploitation of China by

³⁵⁶ 'Beijing seizes Tibetan monks after march of protest', *The Guardian*, 25 March 1991, p.8

³⁵⁷ 'Dalai Lama pleads for Western toughness to save helpless Tibet', *The Observer*, 17 March 1991, p.13

³⁵⁸ 'Dalai Lama says independence not in Tibet's interest; seeks autonomy to preserve culture', Jan Sliva, *Associated Press*, Brussels, 31 May 2006

³⁵⁹ Meeting report, the 52rd meeting of the Tibet Intergroup, 16 May 2006, Strasbourg

imperialist powers (Xu 2008: 4). Thus, the CCP would hope to use the Games to promote a story that focuses on three decades of high economic growth, the success of pulling millions out of poverty, and expectations in future to be proudly recognised and integrated in the global community (Askew 2009: 111). Amid a strong nationalistic desire on behalf of majority of Han Chinese for China to gain due recognition from the rest of the world, the Tibet protest in Lhasa in early March was already considered embarrassing for the Chinese regime. Sheridan (2008: 6) notices that ‘with the Olympic Games due to start in just a few months, and with the global media poised to descend *en masse* on its national capital, Beijing found itself caught in a dilemma when protesters in Tibet took to the streets’.

When the Tibetan protest turned violent on 14 March 2008, the EU issued a statement urging China to show restraint towards demonstrations in Tibet, however the criticism by EU leaders of China’s response to demonstrations in Tibet did not go as far as to threaten a boycott of the Beijing Games on human rights grounds.³⁶⁰ In early April, European lawmakers urged EU leaders to boycott the Olympic Games opening ceremony in Beijing on August 8 unless China resumes talks with Tibetan exiled spiritual leader the Dalai Lama.³⁶¹ The President of the Commission, Mr Barroso said during his official trip to China that he was against the boycott of the Olympics which “must be a celebration of the youth of the world and it must be a success.”³⁶² EU Trade Commissioner Peter Mandelson, who was part of the Barroso’s delegation to visit China, added that:

*‘....some appear to assume that a course of direct confrontation in connection with the Olympics and Tibet serves Europe’s interests, and indeed Tibet’s. [...] It is to be expected that some on both sides of an issue like Tibet will call for boycotts of one kind or another. I do not support these because, while it is easy to see how they would hurt the interests of ordinary Europeans and China, it is not possible to see how they would help.’*³⁶³

While the EU statement stayed clear of any mentioning of the Beijing Olympics and the

³⁶⁰ Presidency statements on behalf of the European Union, 7675/1/08 REV (Presse 73), *Situation in Tibet*, 19 March 2008, Ljubljana

³⁶¹ ‘EU trade chief warns of confronting China over Tibet’, *Agence France Presse*, London, 15 April 2008

³⁶² ‘EU chief says wants “positive” news soon on Tibet’, *Agence France Presse*, 25 April 2008.

³⁶³ ‘Living with China’, Speech by Peter Mandelson, EU Trade Commissioner, at the China-Britain Business Council, London, 15 April 2008

EU officials, including Javier Solana and Jose Manuel Barroso “intended to be at the Olympics”,³⁶⁴ some Member States were contemplating their own approaches. However, for Member States, the balance between open criticism and private diplomacy is always hard to strike. When the 27 foreign ministers met in Slovenia on 1 April 2008 to decide on whether to attend the Beijing Games and at what level in relation to China’s crackdown on Tibet, the outcome of the meeting was that Member States would decide on this individually. Germany and Poland would have no ministerial-level participants there. The Netherlands, Sweden and other nations ruled that out, whereas the French and UK head of States were undecided at the time.³⁶⁵

In the following, I elaborate on the major member states’ Tibet policy and their responses during 2008. Although Manners (2008, 2009) is very explicit in his later writings that the NPE concept seeks to think ‘outside the box’ beyond the agency of states, the differences amongst member states’ normative behaviour, despite subscribing to similar normative commitment, highlight the inevitable conflicts between norms and interests which help us think about whether normative power can have economic interests, and why the Tibetan case has called the EU’s actorness into question.

- *France*

According to Fox and Godement (2009: 27), France has a strong inclination to switch between criticising China on human rights and cultivating good political relations with China. Likewise, France tends to be unpredictable on the issue of Tibet, both for the Chinese as well as for other Member States on the receiving end. On 14 March 2008 when the Tibetan protest caught the world’s attention, even reminiscences of 1989, French Foreign Ministers Bernard Kouchner said France wanted to keep its options open on whether to take further measures. He insisted that his government would not boycott the Olympics, “but France can draw the attention to the link between the Olympic Games and this Tibetan aspiration, which China has to take into account”.³⁶⁶ Nevertheless, President Nicolas Sarkozy was the first European leader to have reportedly suggested that the

³⁶⁴ ‘The Threat of Boycott’, John Fox, *EUobserver*, 28 March 2008

³⁶⁵ ‘EU expresses “strong concern” over Tibet but skates around China’s role’, *Associated Press*, 29 March 2008; ‘The Threat of Boycott’, John Fox, *EUobserver*, 28 March 2008

³⁶⁶ ‘EU leaders urge China to show restraint toward demonstrators in Tibet’, *Associated Press*, Brussels, 14 March 2008

opening ceremony provided an opportunity to expose the human rights problems in Tibet, and to protest China's recent crackdown on the Tibetan unrests.³⁶⁷ On this occasion, the French president appeared to have adopted a new approach in which he publicly took a critical stance, while using his threat to boycott the Olympic Opening Ceremony to influence China over Tibet (Fox and Godement 2009: 27). As a consequence, France was targeted by China for condemnation and diplomatic retribution.

- *Germany*

For Germany, to risk sacrificing its trade relations with China for the sake of taking a stand on human rights was, without a doubt, a big political decision. In 1995, Germany had already antagonised China by holding hearings on Tibet. Despite the Chinese government's furious protests at the time, German trade did not suffer.³⁶⁸ When Chancellor Angela Merkel met with the Dalai Lama in September 2007 in Beijing, China suspended all political contact, but there was no sign of dramatic decline in German trade, thanks to the economic relation with China that was dominated by small and medium-sized business (Weske 2007: 5). On 28 March 2008, German Foreign Minister Frank-Walter Steinmeier had diplomatically rescued himself and Chancellor Angela Merkel from attending the Beijing Olympic opening ceremony, but implied that it had nothing to do with the situation in Tibet.³⁶⁹ As a result, Germany's position on Tibet and human rights did not result in trade retaliations by China, which makes Germany a unique case, due to the sound reputation of its manufacturing equipment and automobile industry (Fox and Godement 2009: 48).

- *UK*

Because of its special affiliation with the history of the Tibet question, the UK has always been willing to meet the 14th Dalai Lama in non-official settings (Fox and Godement 2009: 25). On the days of rioting and demonstrations in the streets of Tibet's capital Lhasa, British Foreign Secretary David Miliband insisted that "all European countries will be seeking clarification," to protest Chinese rule. "There are two messages, one is the need for restraint,

³⁶⁷ 'EU expresses "strong concern" over Tibet but skates around China's role', *Associated Press*, 29 March 2008

³⁶⁸ 'What sort of a woman are we?', Isabel Hilton, *The Guardian*, 21 May 1996, p.19

³⁶⁹ 'German Chancellor not planning to attend Olympics opening', *Agence France Presse*, Brdo, Slovenia, 28 March 2008

the other is that substantive dialogue is the only way forward.’³⁷⁰ On 26 May 2008, the Chinese Foreign Ministry Spokesperson Qing Gang commented on British Prime Minister Gordon Brown’s meeting with the Dalai Lama that:

*‘This not only interferes in China’s internal affairs, but severely hurts Chinese people’s feelings. China expresses its strong dissatisfaction and resolute opposition. [...] The UK government has reiterated its non-support of “Tibet Independence” on many occasions. We urge the UK side to translate its commitment into concrete actions, contribute to the long-term development of the bilateral relations and safeguard the overall interest of China-UK relations.’*³⁷¹

Five months later, the UK changed its formal position from recognising the Chinese suzerainty to fully acknowledging China’s sovereignty over Tibet.³⁷² However, China did not reciprocate with any positive move.

On the Chinese side, the ongoing crackdown in Tibet has led to public protests that have disrupted the international legs of the 2008 Beijing Olympics torch relay, particularly in London, Paris, and San Francisco. The backlash against China’s policy in Tibet generated anti-Western demonstrations in China to boycott the French retailer Carrefour.³⁷³ For China, the decision of postponing the EU-China summit in December 2008 was taken in protest at French President Sarkozy’s plan to meet the exiled Tibetan spiritual leader while France was holding the rotating EU Presidency. The Foreign Ministry spokesman Qing Gang stated that:

“[...] The Tibet issue is related to China’s sovereignty and territorial integrity and it touches China’s interests at the core. We firmly oppose the Dalai Lama’s separatist activities in foreign countries with any capacity, and firmly oppose the contact between foreign leaders with him in any form. To maintain good relations with France and the European Union, China has been patiently

³⁷⁰ ‘EU leaders urge China to show restraint toward demonstrators in Tibet’, *Associated Press*, Brussels, 14 March 2008

³⁷¹ ‘Foreign Ministry Spokesperson Qin Gang’s Remarks on British Prime Minister Brown’s Meeting with Dalai’, Ministry of Foreign Affairs of the People’s Republic of China, 26 May 2008

³⁷² *Written Ministerial Statement by David Miliband*, London, 29 October 2009.

³⁷³ ‘EU should support China on Tibet issue, government says’, *Agence France Presse*, 22 April, 2008

working on France time and again, hoping that it would properly handle the Tibet issue, so as to create necessary conditions for the China-EU Summit Meeting. Regrettably, the French side does not actively respond to China's efforts of maintaining relations with France and the European Union. Therefore the summit cannot be held in a sound atmosphere, nor can it achieve the expected goals. Under such circumstances, China has no choice but to postpone the China-EU Summit Meeting."³⁷⁴

The cancellation of a high-level summit with the EU over Tibet is an unprecedented and unusual move by China to send the EU a strong signal which carries multiple implications. For Robbie Barnett (2008), "there are internal divisions among the EU powers, and this is a squeeze to try and see who will stick to their principles and who believes they mustn't upset China ... it's a high-stakes game." It also shows China's increasing willingness to flex its strengthening global muscle.³⁷⁵ A Chinese political commentator simply suggested that "China thinks the Tibet issue is more important than its relation with Europe".³⁷⁶

Overall, China's concern to protect its international image does provide the EU leverage over China. Massive public protests in Europe during the Olympic torch relay had sufficiently embarrassed China. However, the process of 'shaming' China on the international stage had provoked nationalistic resentments against Western governments and media. Within the country, the official Chinese view of Tibet is universally accepted as Chinese have been subjected to decades of Chinese propaganda as the only source of information. Shaming might be successful in pressuring China into sharpening its propaganda language overseas or hiring more international public relations firms, it does not threaten China's fundamental concerns over its domestic legitimacy, or regarding Tibet – that is, China's territorial integrity (Grunfeld 2006: 340).

5.3.2.6 Deontological Ethics

In this case study, the second part of the tripartite analysis looks at how the EU promotes the principles it stands for through actions and policies on the situation in Tibet. According

³⁷⁴ 'Foreign Spokesperson Qing Gang's Remarks on Postponing the 11th China-EU Summit Meeting', Ministry of Foreign Affairs of the People's Republic of China, 27 November 2008

³⁷⁵ 'A time for muscle-flexing: as Western economies flounder, China sees a chance to assert itself-carefully', *The Economist*, 19 March 2009

³⁷⁶ 'Did Britain Just Sell Tibet?', *New York Times*, 24 Nov. 2008.

to Manners (2008), virtue ethics look at what kind of moral character the EU has, whereas deontological ethics ask what the EU ought to do. Therefore, a deontological approach to normative power emphasizes “the rationalisation of duties and rules which guide the EU in its external actions” (Manners 2008: 57). To that end, deontological ethics guide and assess the ways in which the EU addresses the Tibet question, and criteria it offers to NPE are based on ‘being reasonable’ (Manners 2008: 58).

Hypothetically, ‘being reasonable’ means that the ways in which the EU addresses human rights problems in Tibet should be based on legitimated human rights principles which are promoted through normative power mechanisms, namely, persuasion, invoking norms, shaping discourse, living by example and shaming. Therefore, in order to be ‘reasonable’, the principles that underpin the EU’s policies should be established through the process of reasoning and rationalisation, otherwise it risks becoming an imperialistic endeavour which would presume European norms are universal. In the Tibetan case, I argue that the right to self-determination, as laid down in UN Charter, UNDHR, ICCPR and IESCR and concluded in UN Resolutions constitute the legal and normative justification for the EU to recognise this right and invoke this principle when it comes to the Tibet question. The same should apply to individual human rights, including rights of ethnic minorities and religious freedom. In this respect, the EU’s normative positions on Tibet, despite being ambiguous and accommodating over the years, all fall squarely within international human rights law.

As for the process of diffusing legitimated human rights principles, deontological ethics look at how it has been done, rather than what has been done. To that end, the mechanism of persuasion and argumentation sits well with the nature of normative diffusion. On the surface, the case study demonstrates that the process of ‘persuasion and argumentation’ was materialised by the EU through initiating and institutionalising regular dialogues on human rights, Troika visits and exchange of delegations. However, in the actual processes, China has maintained that its Tibet policy was completely in compliance with its national law, and its absolute sovereignty over Tibet as guaranteed by international law is not subject to negotiation. Therefore, the motivation for China to agree upon engaging in the process of dialogues and cooperation was out of political concessions to avoid being subject to UN resolution sponsored by the EU member states. The EU, on the other hand,

had to abandon a confrontational approach as its normative concerns tend to be overridden by materialistic interests.

Invoking norms in the case of Tibet has been translated as activating China's legal commitment mainly through passing EP resolutions. When China failed to adhere to international agreements to which it is a party, one can argue that the EP has been sufficiently 'reasonable' to invoke China's contravention of commitments to Tibet under international law. However, as for shaping discourse, since the EU's rhetoric and positions on Tibet had to accommodate the need to engage China, at the cost of Tibetan's interests and its own initial normative commitment, it should be considered the least 'reasonable' compared to other forms of norm diffusion. Shaming of the Chinese government when it violates human rights in Tibet had become a popular tool adopted by European governments. In 2008, the policy practice of this sort was to (threaten to) boycott the Beijing Olympics so as to influence China's handling of the delicate situation in Tibet. However, in the absence of credible sources to have confirmed the scale of human rights violation in Tibet at the time, the calls for boycotts could be a reasonable practice, not only it had resulted in reputation loss for China, but also corresponded with the intensive public attention to the Tibet issue in Europe. Nevertheless, the normative power of this policy practice in view of deontological ethics was severely weakened when member states' decisions ended up in deep division without reaching a common position.

5.3.3 Normative Impact

Until the EU had embarked on a policy based on cooperation and persuasion in 1998, the majority of the EU's concerns on the situation in Tibet had been mostly channelled through the Parliament's resolutions. Often being belligerent and strident, these concerns had neither been sufficiently considered by other EU bodies and member states, nor produced many tangible results.³⁷⁷ The benchmarks of the dialogue approach on human rights, as agreed by China in 2001, set out the EU's policy objective for Tibet as "respect for cultural rights and religious freedoms"³⁷⁸ The last time Tibet was mentioned in the Commission's Communication in 2003, the EU was aiming to prioritise Tibet in its bilateral political

³⁷⁷ Assessments and recommendations on Tibet, Sub-Committee on Human Rights, *International Campaign for Tibet*, 1 December 2009

³⁷⁸ Evaluation of the European Commission's Co-operation and Partnership with the People's Republic of China, Country Level Evaluation, Final Synthesis Report, April 2007, Brussels, p.85

dialogue with China to ‘encourage China and the Dalai Lama to further strengthen ongoing direct contacts with a view to finding a mutually acceptable solution to the question of Tibet in the context of ensuring a genuine autonomy for this region’.³⁷⁹ However, Goldstein (2004: 212) suggests that, ‘despite rhetoric in the West asserting that if China would only agree to sit down with the Dalai Lama, both sides could solve the conflict to their mutual satisfaction, [...] there are actually enormous hurdles that will have to be overcome before a settlement of this conflict can occur, or even before meaningful talks can be held.’

Although China has made no compromise on Tibet, either in rhetoric or in policy action, the impact of the EU’s efforts cannot be simply judged by specific policy means and ends. With abovementioned concerns in mind, this section attempts to identify the impact of the EU’s normative agenda on the issue of Tibet from an NPE perspective, and evaluate such impact through a consequentialist understanding of effectiveness.

5.3.3.1 Chinese official discourse and EU-China relations

In China’s first and only 2003 EU policy paper, ‘Promote the EU’s understanding of Tibet’ stands alone as one of China’s eight policy priorities towards the EU in the political aspect.³⁸⁰ On the one hand, China welcomed ‘the support of the EU and its members to Tibet’s economic, cultural, educational and social development and their cooperation with the autonomous region subject to full respect of China’s laws and regulations’, on the other hand, it requested the EU ‘not to have any contact with the “Tibetan government in exile” or provide facilities to the separatist activities of the Dalai clique”’.³⁸¹ While dealing with the Tibetan exiles, China has adopted “a position of no recognition, no reciprocity, no commitment and no concession and no compromise”.³⁸² In the current EU framework of China policy based on the 2006 Communication paper, the EU previous concerns on ‘protection of ethnic minority rights in Tibet and Xinjiang’, ‘respect for cultural and religious freedoms in Tibet’ in the 1998 and 2001 versions have been replaced by policy initiatives to ‘encourage full respect of fundamental rights and freedoms in all regions in

³⁷⁹ COM (2003) 533 final, ‘a maturing partnership – shared interests and challenges in EU-China relations, Brussels, 10.September, 2003, p.10

³⁸⁰ Chinese Ministry of Foreign Affairs, *China’s EU Policy Paper*. Beijing, 13 October 2003

³⁸¹ Ibid.

³⁸² Statement of Kelsang Gyaltesen at the Hearing on Tibet in the Foreign Affairs Committee, European Parliament, 31 March 2009, quoted in *International Campaign for Tibet* (2009), p.8

China'.³⁸³

Responding to the EU's concerns over the situation in Tibet, China officials always insisted that "Tibetans are already enjoying complete religious freedom and Tibetan people's lives have been improved to a greater extent, attributing to China's central government's financial support".³⁸⁴ The Foreign Ministry's responses are standardised, reiterating and emphasising that China opposes any country's interference in the Tibet issue as it perceives it to be China's internal affair. It reads as if the Chinese government are convinced that the criticisms based on human rights arguments were too mild to appear to be threatening China's fundamental interests over sovereignty and domestic stability.

In the eyes of Chinese political commentators, the Tibet issue has put a formidable strain on EU-China relations within the last decade. Some argue that it was in the EU's long-term interests to be seen as 'normative power' or 'soft power' if the EU keeps up with its criticisms on Tibet as a human rights problem, especially at the time of global economic crisis (Jian 2009a). Furthermore, narratives associated with 'China's rise' have also been referred to by the Chinese thinkers to make sense of the West's support for the Tibetan case, as 'some European politicians have ulterior motives and the vicious intention of containing and checking the emergence of China as a global power'.³⁸⁵

5.3.3.2 China's International Image

That the European governments still frequently meet with the Dalai Lama has contributed to keeping up the international visibility of the Tibet issue over the last two decades. In this way, China had suffered a reputation loss as a result of European government's increasingly resorting to public criticism through shaming as a less costly way to demonstrate their concerns over human rights in Tibet (Wan 2001).

In April 2008, the Chinese were said to be highly concerned about how the tide of European opinion had turned. Beijing was disappointed 'to see the disappearance of a European stance whose principal merit was opposing the United States by taking up

³⁸³ COM(2006)632 final

³⁸⁴ 'China to continue human rights dialogue with EU', *Xinhua News Agency*, Copenhagen, 25 September 2002

³⁸⁵ 'Tibet Issue is a thorn in China-Europe ties', *The China Daily*, Beijing, 19 June 2009

positions more favourable to Chinese interests'.³⁸⁶ A few months before the Beijing Olympic Games, European public opinion was becoming much more critical towards China. For China's domestic audience however, the Chinese propaganda machine argued that the European public opinion was manipulated by the Dalai Lama 'clique' and some international anti-China forces who have moved to build new ties with Tibet-related non-government organisations in the US and the EU.³⁸⁷ Given that 'there are some two hundred Tibet-related NGOs operating in Europe with about 200,000 members', the Chinese believe that NGOs frequent engagement with the European politicians have not only contributed to 'anti-China activities' overseas, but also added tensions in Sino-EU relations.³⁸⁸

5.3.3.3 Release of Tibetan political prisoners

For the vast majority of Tibetans— those in China – a confrontational approach by the West in 1990s had done very little, if not the opposite of what was intended, which was to protect the Tibetan identity (Grunfeld 2006: 341). Nevertheless, there have been individual cases in which the EU had exerted crucial pressure on China and produced positive results. In 1993, two Tibetans were arrested in May 1992 for passing human rights information to a group of visiting EU Troika ambassadors. The Commission issued a statement calling for their release, and the Parliament passed two similar resolutions. The two were released ten months later, which was hailed by the NGOs as an unprecedented development of China's human rights policy in Tibet.³⁸⁹ Then the famous case of Tenzin Deleg Rinpoche, a Buddhist lama who was initially sentenced to death with a two-year execution reprieve, was later reduced to life imprisonment, thanks to the international pressure led by the EU.³⁹⁰ However, compared to the NGO reporting on violation of Tibetans' human rights in China, these two cases were rare: it was either to do with the EU's direct link to their arrests or the EU's prioritised issue area – the death penalty. In fact, rather than a proof of EU normative power, these cases have shown that the EU did have a range of policy options at its disposal to address the situation in Tibet when it showed serious concerns.

³⁸⁶ 'Balancing Tibet and Trade: EU Delegation Faces Difficult Tightrope in China', *Spiegel Online*, 24 April 2008

³⁸⁷ 'Tibet Issues is a thorn in China-Europe ties', *The China Daily*, Beijing, 19 June 2009

³⁸⁸ Ibid.

³⁸⁹ 'Chinese Release Gendun Rinchen', *World Tibet Network News*, 13 January 1994, compiled by Nima Dorjee, *Tibet Information Network*, London, 13 January 1994, p.1

³⁹⁰ See AI, 'Miscarriage of Justice? The trial of Tenzin Deleg Rinpoche and related arrests', ASA 17/029/2003

5.3.3.4 Consequentialist Ethics

Consequentialist ethics argues that normative action depends on the consequences of the action.³⁹¹ As it is applied to NPE, the right consequences are measured according to the principles found in the target society, rather than the merits of those who deliver the action (Manners 2008: 58). In this sense, the impact of EU human rights policy should be judged by the general rules and principles found in the Tibetan community, rather than the EU's own principles.

In the case of Tibet, the EU implicitly acknowledged but did not formally recognise the Tibetan exiles, or indeed the Dalai Lama, as the legitimate representative of the Tibetan community, including those in China. However, when the Tibet issue is framed either in terms of sovereignty or international human rights, the major audience is the international community, often Western societies, not Chinese citizens or Tibetans in China. The former are exposed to and have only recognised the Chinese official version of history, while the latter are simply silenced.

No longer focusing on the human rights situation in Tibet *per se*, the EU has adopted an implicit approach to promote reconciliation between the Chinese leadership and the Dalai Lama in recent years, which according to the EU External Affairs Commissioner Chris Patten, 'would not be altogether bad for China's image internationally.'³⁹² In view of consequentialist ethics, the EU has been deviating itself from its normative commitment to the Tibetan cause, and leaving the Tibetans to establish dialogues with the Chinese who have adopted a non-negotiable position on Tibet and yet still proclaimed 'the door to dialogue is open'.³⁹³ Speaking to the European Parliament's foreign affairs committee on 31 May 2006, the Dalai Lama shared his observation and vision that:

"Last year we renewed direct contact with the representatives of China; five round-table discussions took place. However, the government has not acknowledged that. Inside Tibet there is no sign of improvement. [...]"

³⁹¹ 'Consequentialism', *The Stanford Encyclopaedia of Philosophy*, available at <http://plato.stanford.edu/entries/consequentialism>, first published on 20 May 2003, substantive revision 9 Feb 2006 [accessed 18 May 2011].

³⁹² 'EU Commissioner Patten urges China to talk to the Dalai Lama', *Agence France Presse*, Shanghai, 29 March 2002

³⁹³ 'Tibet issue to take back seat as EU-Beijing economic talks focus on old concerns', *South China Morning Post*, 25 April 2008

Democratic China is the only medicine for Tibet.”³⁹⁴

To that end, despite all the efforts the EU has done to address the Tibetan cause, the EU has not made any normative impact on the situation in Tibet if normative power only depends on, in view of consequentialism, the consequences on the Tibetan community in China.

5.4 Conclusion

This chapter follows the ‘the theoretical replication logic’ (Yin 1984, 1994) as I elaborate in *Chapter Two*, to treat the Tibetan case as an analogous case-study which is initially anticipated to disconfirm the NPE hypothesis. In so doing, I first look into the key areas and state of controversy regarding the Tibet question, and the ways in which different views of Tibet’s political status and internal situation are formulated. With a particular focus on how the EU related to Tibet’s historical and political context, both in terms of direct historical involvement or influence on political debates, I establish a certain level of factual evidence in view of assessing the legitimacy basis for the EU foreign policy in the second section. After reviewing literature on how the Tibet question has been discussed in international law, I evaluate the relevance and validity of international norms and clarified the legal basis for a possible solution for the Tibet question, for the reference of the international community, including the EU.

Following the guidance of the tripartite NPE framework, I first look at how EU institutions and member states had developed their approaches and ask the extent to which Tibet as a human rights issue became aims and objectives in EU foreign policy. Through the insights of constructivism, I explore these questions by asking how Tibet is related to the EU’s external identity, normative interests and internal experience. Through virtue ethics, I establish that the EU is not a normative power as the Tibetan case has not been addressed by the EU coherently and consistently.

In the second part of the framework, I discuss how the EU has pursued its policy objectives in relation to Tibet by translating the five norms diffusion mechanisms into actual policy procedures that had been carried out. Through deontological ethics, I conclude that there

³⁹⁴ ‘Dalai Lama says independence not in Tibet’s interest; seeks autonomy to preserve culture’, Jan Sliva, *Associated Press*, Brussels, 31 May 2006.

has been evidence to suggest that EU normative power had been exercised through the process of ‘reasoning and rationalisation’. However, without a unified front, the internal division between EU member states and institutions had severely undermined NPE by conflicting interests and different level of commitment to human rights norms in their external policies.

In the last stage of the tri-partite framework, I seek to identify the normative impact of the EU on the situation in Tibet by tracing any changes its policy might have led to. Given that China has made no compromise in the discourse and policy on Tibet, and lack of access to information regarding the real situation in Tibet, the results do not match the efforts the EU has made in terms of words and deeds. Following a strict interpretation of consequentialist ethics, I further establish that the EU’s normative agenda has not resulted in credible changes in Tibet, confirmed by the Dalai Lama on behalf of the Tibetan community.

Overall, the Tibetan case captures both strong and weak normative power among different EU institutions and Member States. An analysis of the EU’s rhetorical and substantive responses to human rights abuses in Tibet reveals the limitations of human rights as a central organizing principle within the CFSP when it is applied to its external relations with an important trade and strategic partner. Furthermore, although the Chinese regime has been under constant pressure from international community over Tibet, this pressure never emerged as an independent variable such as sovereignty and domestic stability in determining China’s Tibet policy. In essence, the EU lacks a collective voice and means to shape China’s Tibet policy and this ultimately accounts for the failure of the EU’s normative agenda on Tibet. Had the EU demonstrated greater unity and consistency in pressing for and prioritising this normative agenda with China, the EU at least could have put up a strong defence against China’s ‘diplomatic bullying’ (Metten 2009).

Chapter Six

Conclusion

As a non-European ‘interested’ observer, my choice of NPE as a theoretical approach does not mean a wholesale adoption of a European self-perception and discourse of political rhetoric. Rather, taking on this perspective, at least for me, involves targeting the type of norms that bear the highest level of universality, and learning to think both ‘inside’ and ‘outside the box’ before all too quickly rejecting this European foreign policy interpretation as a ‘Eurocentric or imperialist endeavour’. From a perspective that is embedded in IR Constructivism within the study of European foreign policy, the learning process in this thesis has involved delving into debates on universal human rights norms/cultural relativism, international politics of EU-China relations, Chinese and European legal studies, Tibetology and so on. This is a journey characterised by revisiting and redefining my positions on a series of theoretical and empirical issues that are highly contentious between the two competing normative systems. To that end, I have made no conscious attempt to disguise my personal stance. This thesis is thus a reflection of my theoretical and empirical journey over the years past.

In this thesis, I seek to achieve two central objectives. First, I attempt to add to the empirical richness of NPE literature by analysing one of the most complicated and important, country-based case studies; and second, I intend to apply NPE as a conceptual framework to the complex normative dimension of the EU’s relations with China in the field of human rights. To address the first goal, I analyse the case of China through two sub-cases – the death penalty and the Tibet question, which have been both high on the EU’s human rights agenda and yet are predicted to produce contrasting findings on NPE. The second aim is met by reflecting upon a multi-dimensional understanding of power and effectiveness, through which I normatively theorise the EU’s promotion of human rights in

China. To that end, I endeavour to show that the NPE as an approach provides us some alternative ways of understanding and judging the EU's normative influence on China.

This chapter therefore synthesises these two contributions by: 1) assessing the hypotheses posed in *Chapter Two* by comparing the two issue areas; 2) drawing substantive conclusions within the structure of the NPE framework; 3) revisiting methodological issues, including the value and deficiency of using normative ethics.

6.1 Findings and Implications

Adopting the NPE as an interpretive approach does not necessarily prevent me from framing hypotheses to test its empirical relevance. In other words, I seek to both explain and understand the EU's normative power through the Chinese case. In this thesis, the main hypothesis is that the EU has been and should be a normative power to China in the field of human rights. To verify this assumption, I apply this perspective to two case-studies, each in line with the main hypothesis and three sub-hypotheses that have been evaluated by data on normative principle, normative action and normative impact respectively. This section thus incorporates empirical findings from both case-studies, and evaluates the significance of the independent variables.

6.1.1 Substantive Conclusions

The rise of China has meant increasing competition with the EU on the global stage, not just as an economic power but also as a self-proclaimed normative power according to its own standards (Womack 2008). In this context, China as a case study is a curious amalgam of EU selfish and selfless interests, and human rights dichotomy between the universalist-versus-relativist paradigms, all of which sets to provide a litmus test for the empirical validity of NPE.

Chapter One sets out three core research questions, as guided by the aforementioned main hypothesis:

- How and why do human rights become aims and objectives in EU foreign policy?
- How does the EU act to change normality?
- How should the impacts of EU normative power to be evaluated?

The logic of these questions corresponds with the NPE framework elaborated in *Chapter Two*, with each question revealing one part of the theoretical arguments, and related sub-hypothesis in order to guide the collection and analysis of empirical data. *Chapter Three* contextualise the case-studies against the backdrop of contemporary EU-China relations, with its findings feeding back to the wider debate about the extent to which the notion of NPE captures the EU's international role in the case of China on human rights.

In *Chapter Four* and *Chapter Five*, each individual case study is treated as an independent study, following the tri-partite structural sequence. Striving for a 'structured, focused comparison' (George and McKeown, 1985: 43), I collect data using standardised requirements based on defined NPE hypotheses, and analyse data on the same variables. In the following, I further reflect upon the relationship between these two issue areas as well as the general pattern of the Chinese case, by comparing their empirical findings and drawing cross-case conclusions.

- ***On Principle***

In the first part of the tri-partite framework, I hypothesise that the human rights norms under investigation are constitutive principles of the EU in its internal practice, which serve to facilitate the EU's human rights agenda towards China. In establishing criteria for normativity, I look into the UDHR and its related UN documents which constitute the most important normative justification for NPE. To that end, if EU principles derive from or invoke these international legal standards, they are not Eurocentric. On the other hand, by elaborating on Chinese perspectives as contesting norm interpretations to those of the EU, an acute awareness of any imperialist or Eurocentric endeavour shall lead to greater self-reflexivity and sensitivity for China's historical, legal and cultural traditions and perceptions.

Identity

In the death penalty case, I trace the cultural/moral, political and legal origins that have shaped the abolitionist movement in Europe. Based on primary and secondary data, these findings confirm the EU's normative difference, giving a clear exposition of a European penal identity. The Tibetan case, on the other hand, exhibits a far more complicated pattern. Since the late 1990s, EU institutions and member states developed an implicit consensus

that they recognised China's sovereignty, and respect for human rights and religious freedom, which has increasingly framed its response to the situation in Tibet. However, EU normative identity as a sympathetic outsider with an important role to play in the eyes of international Tibet support groups has been undermined by intra-EU divisions and contested by the colonial history of Britain, at least in the eyes of the Chinese.

In order to understand these contrasting findings, we need to revisit the basic claim put forward by Manners (2002: 241-244) about NPE that the EU is a normative power because it has a normative identity. An objective understanding of identity would sit well with the 'easy' case of the death penalty, in which the nature of the EU as a hybrid polity with treaty-based legal order and willingness to discard the Westphalian model has facilitated its formulation of a distinctive penal identity as a 'death penalty-free zone'. To that end, the EU's normative identity in the international abolitionist movement is self-evident. In the Tibet case, due to the lack of a clear and consistent articulation of which international norms underpin the EU's concerns, or what internal values 'predispose' the EU to respond, the EU's normative identity is not well established and is particularly challenged by Chinese perceptions. Hence, it is subjective if not insignificant.

Interest

Although the normative identity of the EU lays the basis for its normative interests from a constructivist perspective, such interest has not been the only force of influence in shaping EU human rights policy. In the death penalty case, I seek to identify an instrumental or strategic dimension by asking why this issue area has become a primary human rights concern of EU foreign policy. The findings suggest that the EU does have a strong propensity in demonstrating its normative interest for the common good to abolish the death penalty globally; and it also combines an instrumental purpose to achieve its milieu goal in order to establish the distinctiveness of EU external identity. In the case of Tibet, the EU's normative interests ought to be concerns for Tibetans' human rights, however, other concerns, such as the need to engage China in both human rights and beyond have been far more pronounced. Therefore, while the EU normative interest goes hand in hand with its milieu goal to reinforce a distinctive European identity in the former case, it is at odds with its materialist interest in the latter, in which EU internal division of interests has eventually led to the prioritisation of material over normative interests.

The key to understanding these different findings thus lies in the relationship between material and normative interests in NPE theorising. The death penalty case is a classic example of the EU pursuing a norm, without aiming at defending or increasing its material interest, but instead shaping the international environment in order to promote a value to which it attaches great importance. However, the EU did not have a clear and independent human rights agenda towards Tibet; instead it was incorporated in the general framework of China policy in which EU normative interest is constrained by economic and strategic objectives. Moreover, as an effort to bridge the gap between normative and materialist interest, the assumption by some EU policy makers that deepened economic and trade relations with China can translate into progress in human rights or political liberalisation (Pattern 2002, in Panebianco 2006: 139), is not supported by the findings presented in the Tibetan case. In hindsight, the inevitable conflict between normative and material interests is one area where the idealistic component of NPE is most frequently tested in this thesis.

Self-binding

In the death penalty case, the empirical findings confirm that the EU has committed itself fully to the abolitionist norm internally, both in law-making and in practice. Whilst in the Tibetan case, the EU's own commitment to international human rights norms and international law has been challenged on several normative grounds, including right to self-determination, and ethnic minorities' rights, both by the Chinese and the 14th Dalai Lama. This discrepancy can be understood in two ways. Firstly, it reflects upon the fluidity in defining which specific human rights norms underpin the Tibet issue, as opposed to the clear-cut legal framework of the death penalty case. Secondly, it reveals that developments in the abolition of the death penalty have certainly reinforced an image of the EU as an NPE. But apart from this rather exceptional case, its actual record in other issue areas is far from immaculate, particularly in the area of minority rights.

Virtue ethics

The path to judging the EU, according to virtue ethics, requires an evaluation with regard to whether the EU's characters or traits have provided normative guidance to act coherently and consistently. The death penalty case perfectly exemplifies the EU, as a 'virtuous example', to base the legitimacy of its foreign policy upon a norm which is embraced by international law and bound by the EU itself. By contrast, the Tibetan case is

a prime example of EU normative character being troubled by internal cleavages and external inconsistency. Thus, having signed up to international law does not necessarily make the EU normative in character; especially considering the problems that arise when the EU fails to apply its principles with rigour. On that note, the development of the EU as an exceptional and virtuous example in global human rights varies from one issue area to another. And the key to understanding this uneven performance lies in the extent to which EU actors have developed a clear human rights agenda based on this commonly shared value.

- ***On Action/Inaction***

In the second stage of analysis, I hypothesise that the EU's promotion of human rights is based on reasoning, and human rights principles are diffused through normative means. By 'reasoning', I mean that the EU activates commitment or has been morally persuasive by referring to generally recognised international law. By normative means, I particularly look into five norm diffusion mechanisms which help us understand the ways in which human rights norms are promoted through non-coercive action or inaction.

Persuasion

Within both cases, I cite the human rights dialogue as evidence of policy process in which persuasion occurred. Instead of relying upon the imposition of the threat of sanctions which did not pay off in the early 1990s, the presumed strength of this non-confrontational approach lies in its discreet nature to which the Chinese appear to be more receptive. In the death penalty case, the dialogue approach has encountered major obstacles when it comes to implementation. During this reasoning process, the EU's cosmopolitan stance on the abolitionist norm has been consistently challenged by China via diplomatic tactics and ruptures. As a result, the principle which the EU has practically extended to China is reduced to international 'minimum standards', which do not prohibit the death penalty. In the Tibetan case, the process of persuasion is carried out not only in the form of human rights dialogue, but also EU troika visits and other delegation visits, which were dedicated to bridge the gaps in perception from both sides. However, in either case, there seems no easy way out of the dilemma between seeking cooperation with China, and a hard-nosed position on the principles that the EU stands for. The findings from both cases suggest that, with a range of other measures at its disposal, the EU adopted the dialogue approach out of

necessity in seeking partnership with China. To that end, being non-coercive in nature does not make the dialogue approach morally persuasive, but rather, it represents the triumph of reapolitik over principle, interests over values.

Invoking Norms

Invoking norms refers to a type of mechanism through which norms are diffused by activating legal commitments that China has subscribed itself to. In the death penalty case, the use of *démarche*, evidencing the existence of such process, was adopted by the EU to complement the human rights dialogue for its responsive demeanour. However, the fact that China is not under any international legal obligation to comment on its death penalty practice has left this approach with little room for rationalising the principle of abolition with the Chinese. In the Tibet case by contrast, through resolutions, declarations and *démarches*, the EU has in the past invoked various levels of international legal commitments which China has contravened. In the early 1990s, EU concerns were squarely focused on the violation of the right to self-determination and minority rights in Tibet, and were reduced to specific individual rights according to individual cases. This absence of a consistent human rights agenda on Tibet is not unique to the EU, but characteristic of the international community as a whole, largely due to the controversial nature of the Tibet issue in relation to international norms. However, these two cases do share a similarity -- that is, the EU's initial principled positions were both called into question, and the EU's softening line has been justified by the need to engage, not confront China.

Shaping Discourses

As a norm diffusion model, shaping discourse is intended to capture discursive changes via learning, adaptation or rejection of the norm under investigation. In the Chinese case, shaping discourse could be identified within human rights dialogue and cooperation programmes, especially those designed to provide China with human rights education, training and academic exchange. In the death penalty case, I illustrate how such cooperation programs were implemented on the ground. The programs that were most likely to have resulted in discursive change, are the ones in which the EU made creative efforts to gain a certain level of trust from the Chinese government by avoiding direct lobbying for the abolition, and focusing on enhancing the professional capacity of defence

lawyers. This finding is contrasted with that of the Tibet case in which China resolutely rejected the EU's principled position, consequently, the EU's discourse on Tibet ended up accommodating the need to cooperate with China to avoid challenging China on its fundamental concern over sovereignty and domestic stability. Thus, the differences between the two cases lie in China's perception of whether proper adherence to international standards would threaten the Communist Party's rule. To that end, strengthening China's rule of law with the help of EU funded projects is certainly more appealing in the eyes of the Chinese leadership, than negotiating the non-negotiable question of Chinese sovereignty over Tibet.

Living by Example

Contrary to all the other norm diffusion models, 'living by example' works without policy action. The rationale is that the others would emulate the EU simply for the example it sets and norms it stands by. Although there has been evidence that China drew extensively from European experience in law-making since the early twentieth century, the vision to follow the footsteps of Europe towards abolition of the death penalty is only a recent phenomenon and controversial topic discussed by law academics on a purely conceptual level. Without a long standing Christian humanistic tradition in law making, it is still unclear in those top thinkers' minds whether the abolitionist ideal could be realised in China in the future. In the Tibetan case, the EU has been perceived to be setting a number of examples not only for the Chinese, but for the rest of the international community and the TGIE, seeking remedy for Tibet's political future. Compared to the cases of Kosovo and Baltic states, the EU had drawn negative attention in its dealings with the Tibet issue, with its root cause stemming from the inherent contradictions within international law with regard to competing rights of territorial integrity of states and group/individual rights. Moreover, because the Tibetan case touches the 'sensitive' area of sovereignty and nationalistic sentiments, the EU as a model particularly runs the risk of reinforcing China's arguments that attempts to "improve human rights" in China are merely a disguised form of imperialism and interference.

Shaming

The power of shaming takes effect when the state associates its identity with a normative community in which certain values are shared. In the death penalty case, China's excessive

use of the death penalty and some abusive practices were raised by the EU at the UNCHR prior to 1998. After the EU abandoned holding China accountable at international fora in exchange for engaging China in the human rights dialogue, evoking a sense of shame became almost impossible, as public information on its process is difficult to come by. Moreover, Chinese authorities repeatedly denounce the legitimacy of the abolitionist norm or deny the global trend of abolition, thus making China unlikely to be shamed without any need to belong to the ‘civilised community’. Whereas in the Tibet case, public opinion within Europe has been vociferous enough for the EU to exercise the power of shaming without officially breaking away from doing business with China. Thus, the Tibetan case suggests that while the EU does have leverage of China through shaming with only occasional diplomatic backlashes, this policy strategy does not generate much materialistic costs on the trade and economic front. However, shaming China over Tibet has produced an adverse national response inside China, and stimulated popular nationalism which is prevailing at the domestic level. In the absence of direct material cost, these contrasting yet complementary findings suggest that China’s capacity of experiencing shame as evoked by the EU varies from issue to issue. Not only does it depend on China’s acceptance of that specific reputation, but also the possibility of the EU using political strategy to encourage its domestic responses to the issue of concern, so as to avoid further material cost in the long term.

Deontological Ethics

In the logic of deontological ethics, principles or good values should be established through practice of reasoning. Judging the EU’s normative actions thus requires an evaluation of whether EU policy practices actually lead to the formulation of human rights standards agreed by the Chinese. By comparison, both cases confirm that the EU pursued its human rights agenda through persuasion and engagement in a normative fashion, whilst invoking norms and shaming to lesser degree. However, findings from both cases show that benchmarks for the dialogue approach, together with its cooperation programs, were set up after concessions being made to allow certain level of agreement to be established as a result of the practice of reasoning. Therefore, the often highly regarded normative means, dialogue and engagement, have called the EU’s cosmopolitan disposition on abolition and its human rights approach to the Tibet into question. While contrasting the two sets of findings, the EU’s own reputation/record on abolition unquestionably bears more moral

weight against China, than that in the Tibetan case. Furthermore, the capacity of EU institutions and member states to act in concert and speak in one voice has made the issue of the death penalty a rare case, highlighting the EU's persuasiveness without its engagement with China being undermined. In the case of Tibet, however, China resorted to other competing international norms to attack the validity of the ones raised by the EU, and tactically exploited the EU's fragmented approach in such a way as to find its own bargaining chip.

- *On Impact*

In the third stage of the analysis, I hypothesise that the EU's normative impact comprises the change in Chinese official discourse, increasing cooperation with the EU, domestic reform and local ownership. By 'normative impact', I refer to discursive change in Chinese official rhetoric, socialisation and partnership, all of which are considered as ideational achievements from a normative understanding of effectiveness. By 'local ownership', I imply that normative impact will be judged if it is 'doing least harm' and 'other-empowering' -- the logic that underlies consequentialist ethics. To verify this assumption, I modify the criteria for collecting valid data in each sub-case study so as to fit with the empirical background under investigation.

In terms of discursive change, there have been visible changes in official discourse, evidenced by the increasing willingness of the Chinese authorities to engage in international debates on the death penalty, and a surge in academic interest on the subject since the late 1990s. Given its strong and coherent normative identity in the case of the death penalty, is the EU more likely to be a driving force than any other international actor in shaping China's domestic discourse. As for a series of legal reforms relating to the death penalty taking place since the late 1990s, the EU did not hesitate to praise its own efforts in assisting these reforms. However, the EU statements were somewhat of an exaggeration of the significance of positive change on the ground. Given the lack of death penalty statistics, it is virtually impossible to establish or assess the accountability of the EU's direct impact. On the other hand, as we have seen in the Tibet case, no tangible changes - neither political rhetoric nor policy practice - can be identified over the years concerned. Despite fact finding efforts being made via EU troika and delegation visits, little is known to the outside world about the actual situation on the ground, thanks to the Chinese government's

powerful control over the information about and access to Tibet. However, during the last two decades, the highly publicised Tibetan cause has left China with a huge loss of reputation worldwide, to which the EU and its member states have contributed by sustaining the international visibility of the Tibet cause, together with other Western states, media, NGOs and pressure groups. To that end, the Tibet issue has put much more formidable strains over EU-China relations than the issue of the death penalty, as the former touches upon China's national interests at the core.

Consequentialist ethics

The path to judging the EU's normative impact, according to consequentialist ethics, should be based on the outcomes of actions. Manners suggests that the right consequences are those measured according to the principles found in the target society, rather than the EU's own principles (Manners 2008: 58). In this thesis, I demonstrate that the Chinese authorities did not recognise the legitimacy of the norms promoted by the EU, but habitually rejected anything that it perceived as Western values. Therefore, I intend to evaluate the right consequences using the principles found in the Chinese society for the former case, and the Tibetan society represented by the TGIE for the latter. However, due to the political sensitivity of the subject matter in China, in neither case was credible data from which to formulate such a basis for normative judgement easy to come by. In the death penalty case, only through primary data from a cooperation project targeting Chinese academic and legal expertise have I identified where the perceived interests of Chinese society in reducing the risks of miscarriage of justice matches the criteria for right consequence of the EU's policy action. Whereas in the Tibetan case, the leader of the TGIE, the 14th Dalai Lama confirmed that there has been no sign of improvement in Tibet, a verdict that is also backed by ongoing human rights abuses documented in NGO reports.

- ***On the General Pattern of Chinese Case***

These two sub-cases are originally selected because they are among the key issues on EU normative agenda, and each signifies certain independent variables of NPE in a complementary fashion, and their findings tend to situate at opposite ends of NPE spectrum.

Reflecting upon the cross-case conclusions, we have seen that NPE has been contested in

similar patterns in each stage of analysis. On principle, problems arise from debates between universalism and cultural relativism, and the uneasy coexistence between norm and interest. On action, the credibility and vitality of NPE is challenged by the stark dilemma it faces between engagement and conditionality/coercion. With regard to impact, China's instrumental behaviour falls short of ensuring genuine progress on the ground, underlying its rigid political culture and the instrumental nature of Chinese law. On the other hand, that the EU acts and China responds differently in each issue area is intimately connected to the perceived legitimacy of NPE, and the fundamental difference between the EU and China concerning order and justice.

Since the events of Tiananmen in 1989, although China has been very sensitive to the exposure of its human rights problems internationally, the authorities justify the state's behaviour through reference to other parts of international law and its very own national circumstances. Through this empirical investigation, I therefore argue that the degree of norm contestation in both cases is too significant to establish a normative basis for which NPE could be perceived to be legitimate by China. The EU has demonstrated its normative power to some degree in view of virtue ethics, but this character has been compromised during the practice of reasoning, and has yet to exhibit significant normative impact. To that end, the main hypothesis that the EU has been a normative power towards China in the field of human rights between 1989 and 2009 has been mainly disproven by the empirical findings presented in this thesis.

6.1.2 Methodological Conclusions

To theoretically account for the EU's role as a normative power towards China in the field of human rights, the concept of NPE has been modulated in order to better understand and explain what the EU says and does in terms of its contribution in the Chinese case. In this section, I discuss the methodological issues surrounding the operationalisation of the NPE framework, and assess the values and problems of adopting NPE as an approach combining the use of normative ethics.

- ***NPE as an Analytical Tool***

Based on an analytical definition of NPE, central to the analysis is the extent to which the EU shapes the definition of normality through the attraction of norms the EU stands for

and the acceptance by others. To apply this analytical dimension of NPE to the Chinese case, I develop a set of specified hypotheses which are subject to empirical evaluation. I also deploy standards of evaluation of NPE that are drawn from the existing NPE literature and formulated according to the conditions in the Chinese case.

Regarding the first sub-hypothesis, the Chinese case is consistent with the understanding that norms such as human rights have constitutive effect on the identity formation of the EU and we can explain the reason for the EU's human rights agenda on China in relation to the EU's own principles and practice.

With regard to the second hypothesis, the norm diffusion mechanisms embedded in this stage of analysis are comprehensive and consistent enough to capture the EU's normative power at work in the Chinese context. Especially through my analysis on 'living by example' and 'shaping discourse', some interesting findings emerge, and add to our knowledge on how norms can be diffused through 'inaction' and how the EU could end up being shaped by China in its policy rhetoric. However, the Chinese case suggests that the EU's normative power is often in conflict with not just economic interests, but also the need for engagement – a basic form of normative action itself. Moreover, that the NPE concept seeks to think beyond the agency of states makes the analysis on phase one (1989-1997) rather problematic when norms are realistically intervening variables between interests and state preferences, due to the lack of EU actorness and EC/EU common policy on China in this period.

When it comes to the third hypothesis, I come across two major adaptation problems in operationalising the NPE concept, while the current NPE literature has little to offer regarding specific assessment criteria as to how ideational impact is defined/translated and evaluated. First of all, the lack of causal variables accounting for norm compliance has made it difficult to establish the linkage between China's domestic development and NPE. For instance, China's legal reform in the area of the death penalty is suggested by the empirical data that it was mostly likely driven by the Party's political reform as a result of a growing civil society, rather than external pressure. Secondly, since China has been subjected to sufficient if not excessive attention by international human rights regime, it has also engaged with numerous other Western countries in bilateral human rights

dialogues and cooperation programmes. Thus, there is a methodological problem in isolating the EU's normative impact from other norm entrepreneurs.

Finally, the most important operational conclusion for NPE is that the evaluation of hypotheses through an interpretivistic approach requires good knowledge about the cultural, historical and legal tradition of Europe and the target country prior to designing an in-depth case study. For countries like China which has no prospect of EU membership and a different normative system, a careful study of international law as external reference also helps us clarify whether certain accusations of NPE as being 'imperialistic' or 'Eurocentric' are in fact normatively justifiable.

- ***Epistemology***

One of the central objectives of the thesis is to contribute to the understanding of the way in which the EU interacts on the basis of its normative power with China. Thus, it requires interpretivist epistemology focusing on the human rights norms in EU foreign policy as reflection of its identity, the ways in which norms are diffused without coercive policy mechanisms and how we comprehend and interpret impact. However, before EU policy coherence and impact may be judged, I resort to causal relations to some degree, before arriving at the interpretivist understanding of 'how' and 'why' EU normative power has influenced China's human rights conditions. In so doing, I adopt analytical techniques of a more positivist nature, which include establishing research hypotheses, 'least-likely' case study, case-by-case/cross-case analysis, and rival explanations. On the other hand, I look into legal, cultural and historical aspects in each issue area which give meanings and detailed understanding of the case. Therefore, I come to the conclusion that, as far as China is concerned, NPE as an analytical approach and a foreign policy interpretation is only methodologically practicable when built upon a co-operative view to the epistemological divide between pure explaining and pure understanding.

- ***Normative Ethics***

Drawn from Manners' (2008) avant-garde piece on 'normative ethics of the EU' which sets out a tripartite framework of analysis as applicable to NPE, this thesis is the first attempt to apply all three ethics within single case-studies in the existing literature. Even though, my tentative contribution to literature in this respect is strictly on the empirical ground without

further exploration in the field of ethical foreign policy or normative theory, this experiment and experience of applying all three normative ethics in this empirical investigation can be summarised in two-fold in terms of its value and deficiency.

Firstly, as ‘ways in which we might judge the principles that [the EU] seeks to promote, the practices through which it promotes, and the impact they have’ (Manners 2008: 45), normative ethics fills in the theoretical gap in the NPE literature by prescribing what ‘ought to be done’. Fitting snugly with the three-stage NPE inquiry on principle, action and impact, these three types of normative ethics come up with well-established assessment criteria for good character, appropriate behaviour and right consequences. In this way, it contributes to our understanding of normativity which the NPE literature would not otherwise have defined, especially in a situation where the level of norm contestation is highly significant.

However, combining all three normative ethics within one empirical investigation can be problematic and self-contradictory regarding which standards are the correct ones. In Manners’ piece (2008), these three types of normative ethics as applied to NPE are presented in a complementary manner, however, their theoretical incompatibility or rivalry is neglected. Virtue ethics focuses on the inherent character of the EU and points to coherency and consistency as key to being a ‘virtuous example’. To that end, the empirical investigation requires the application of these two criteria in the EU’s internal practice and external policy making, in order to guide and assess what kind of actor the EU is and should be. In the Chinese case, the path to judging the EU based on virtue ethics is consistent with the EU’s actorness in foreign policy making which varies depending on its willingness and other external conditions. The contrast between the death penalty case and the Tibet case in view of virtue ethics thus confirms its validity as applied to the EU. However, the major contradiction lies between deontological ethics and consequentialist ethics as they both prescribe guidance and assessment criteria on what the EU ought to do. Under deontological ethics, the EU’s action should be morally judged if it is a normative power, in which case, normativity is assessed based on whether the human rights norm is promoted through a rationalisation process with the Chinese. On the other hand, consequentialist ethics defines normativity only by consequences. In that case, EU normative power should be judged by its impact measured by values found in the recipient

society. As a result, deontological ethics stands in opposition to consequentialist ethics in terms of what constitutes right actions or inaction. In both sub-cases, the Tibet issue and the death penalty have been addressed by the EU using normative means, thus in deontological ethics, the EU's action has been normative, neglecting the fact that the EU's principles on these issues were shaped by China and subject to change during the 'reasoning' process over time. Whereas according to consequentialist ethics, the EU's normative power should be judged using values and principles found in the Chinese society or the Tibetan community in China. Besides the difficulty in obtaining data due to the nature of the Chinese state, the two sub-cases have so far exhibited contrasting results which contradict with the conclusion provided by deontological ethics. Therefore, applying a combination of all three normative ethics to the Chinese case is problematised by value pluralism, as it gives no indication of what constitutes good values.

While there is no convenient answer as to how these three deeply contending ethics can combine, they are three different ways of evaluating the EU as an ethical actor. Although the use of normative ethics seems to have both strengthened and problematised the NPE approach, the exercise of normative theorising itself is a rewarding experience in terms of thinking differently and creatively about how normative foreign policy should be conducted and understood.

6.2 Future Research

Having applied a framework of analysis built upon a growing body of NPE literature to a country whose power dynamics with the EU are rapidly changing, the thesis opens the path for wider theoretical debates on NPE and additional areas of empirical research, which would not have been adequately addressed in a single thesis. Although this research project is largely a reflective piece, its contribution to our understanding of the subject can potentially influence EU decision and policymaking if it could expand in the following directions in the future.

Firstly, due to the limited duration within which this research should have been conducted, the timescale of analysis dates from 1989 to 2009. However, since the Lisbon Treaty came into force on 1 December 2009, and the subsequent creation of the European External Action Service, it would be interesting to assess the role of a High Representative of the

EU for Foreign Affairs and Security Policy, Catherine Ashton, in the area of promoting human rights. Secondly, to ensure the test of NPE is more robust, it would be necessary to rely on a greater number of sample cases that arise within the EU-China relations in the field of human rights. For instance, the arms embargo would be an interesting case which particularly highlights the importance of ‘the US factor’ in the EU’s China policy making. In the same token, it would be interesting to extend the focus beyond human rights, to other normative areas such as good governance, consensual democracy, sustainable development, and global governance, especially China’s growing presence in Africa. To that end, the thesis only provides a starting point for a future research project(s) that can be both timely and original.

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Appendix I:

Table 3.1 EC/EU Funded Cooperation Programmes in China 1989-2009

Implementation	Project	Duration	EC/EU Grant	Commitment
1993	Ningxia Hui and Land Reclamation project	5 Years (extended to 2000)	ECU/€3.8 million(+ECU/€0.75	1992
1994	Qinghai Livestock Development	6 Years	ECU/€3.2 million	1994
1996	Qinghai Potato Development Project	6 Years	ECU/€3.1 million	1994
1996	China-Europe International Business School (CEIBS)	20 Years	ECU/€ 14.85 million	1995
1996	Water Buffalo Development Project	May 1996- July 2002	ECU/€2.787 million (+€0.55 million)	1995
1996	EU-China Technical&Commercial Cooperation within the Dairy&Food Processing Sector	5 Years	ECU/€30 million	1996
1997	China-EC Higher Education Programme	4 Years	ECU/€ 9.75 million	1996
1997	China-EC Cooperation in Agriculture (CECA)	5 Years	ECU/€12.3 million	1996
1997	EU-China Junior Managers Programme	5 Years	ECU/€11.645 million	1997
1997	China-Europe Administration Programme	4 Years	ECU/€5.7 million	
1998	EU-China Training Programme on STD and AIDS in China, Phase II (1998-2001)	3 Years	ECU/€0.995 million	1998
1998	EU-China Training Programme on Village Governance	5 Years	ECU/€ 10.668 million	1996
1998	EU-China Cooperation in the Field of Public Procurement – Pilot Project	Feb.1998- Oct.2000	ECU/€0.615 million	1997
1998	EU-China Cooperation Programmes in Statistics	3 Years	ECU/€4.17 million	1997
1998	Seminar on		ECU/€0.017 million	1998

	Administration of Justice			
1998	EU-China Business Forum		ECU/€0.02 million	1998
1998	EU-China Info Pack		ECU/€ 0.036 million	1998
1998	Legal Seminar		ECU/€0.184 million	1998
1998	Seminar on Women Rights		ECU/€0.193 million	1998
1998	Telecom Management Training		ECU/€0.413 million	1998
1998	Telecom – Health		ECU/€0.175 million	1998
1998	Telecom – Interconnection		ECU/€0.458 million	1998
1998	Bio-safety Workshop		ECU/€0.051 million	1998
1998	Aids Fellowships II		ECU/€0.403 million	1998
1998	WB-Education Sector		ECU/€0.033 million	1998
1998	TV-Environment Broadcasts		ECU/€0.3 million	1998
1998	Small Project Facility-Human Rights		ECU/€0.84 million	1998
1998	Support to Disabled Federation		ECU/€0.98 million	1998
1999	EU-China Intellectual Property Rights Cooperation Programme	3 Years	€4.8 million	1996
1999	EU-China Legal and Judicial Cooperation Programme	4 Years	€13.2 million (Subtotal: 32.87 million)	1998
1999	EU-China Civil Aviation Cooperation Project	5 Years	€12.566 million (plus industry input)	
1999	EU-China Liaoning Integrated Environmental Programme		€37 million	1998
1999	EU-China Relations Inforpack-updating and reprinting		€0.04 million	1999
1999	EU-China Legal Seminar in Bad Honnef, Germany – May 1999		€0.116 million	1999
1999	Contribution to framework contract		€0.15 million	1999
1999	Aeronautics – Phase II – Launch phase		€0.52 million	1999

1999	Second Women Rights Seminar		€0.52 million	1999
1999	Telecom Testing and Certifications (EOTC)		€0.31 million	1999
1999	SCIC – Training of Interpreters		€0.125 million	1999
2000	Framework Programme for EU Support to China's Accession to WTO	3 Years	€3 million	1998
2000	EU-China Programme for the development of vocational training for the industry	5 Years	€15.1 million	1999
2000	EU-China Honghe Environment Protection & Poverty Alleviation Project (HEPPAP), Pilot Phase	18 Months	€0.99 million	1998
2001	Capacity Building for Municipal Solid Waste Management Reform in China	2 Years	€0.461 million (plus €0.143 million UNDP)	
2001	Vehicle Control Cooperation	2 Years	€0.838 million	1998
2001	China-Europe International Business School (CEIBS) Phase II	5 Year	€10.95 million	2000
2001	China-Europe Basic Education Cooperation Programme	4 Years	€15 million	1999
2001	EU-China Scholarship 2000 Programme	5 Years	€31.2 million	2000
2001	EU-China Environmental Management Cooperation Programme	4 Years	€13 million	1998
2001	EU-China Cooperation Programme Pa-Nam (Tibet) Integrated Rural Development Project	5 Years	€7.6 million	1998
2001	EU-China Financial Services Cooperation Project	3 Years	€8.5 million	
2002	EU-China Enterprise	3 Years	€8.5 million	

	Reform Project			
2002	Natural Forest Management Project	5 Years	€16.5 million	2000
2002	The EU-China Small Project Facility	5 Years	€8 million	1998
2004	‘China Window’ in Erasmus Mundus Programme	2 Years	€ 9 million	2003
2006	‘China Window’ in Erasmus Mundus Programme	2 Years	€45 million	2005
2008	Social cohesion and employment project in Tibet Autonomous Region	2 Years	€0.743 million	2008
2009	Training Programme for Service Oriented Government based on the Rule of Law	Nov.2009- Nov. 2013	€4.4888 million	2009
2009	Poverty Reduction Project for children in Xinjiang	Apr.2009 – Mar. 2012	€0.525 million	2009
2009	Mid-Term Evaluation of the Governance for Equitable Development Programme	Dec.2009- Feb.2010	€0.054 million	2009

This list includes projects financed under the following budget titles and budget lines:

- B7-3 Co-operation with Asian Developing Countries
- B7-7 European Initiative for Democracy and Human Rights (EIDHR)
- B7-6000 NGO co-financing
- B7-6212 Health, Population, Fight against HIV/AIDS

Source:

1. Commission of the European Communities (1998), ‘Building a Comprehensive Partnership with China’, COM (1998)181 final
2. Commission of the European Communities (2000), ‘Report on the Implementation of the Communication ‘Building a Comprehensive Partnership with China’, COM(2000)552 final;
3. European Commission Delegation in Beijing, China (2001), ‘EU-China Cooperation Projects: Financed on Budget-Lines B-3000 and B-3010’, <http://delchn.cec.eu.int/co/index.htm>.

4. Commission of the European Communities (2001), 'EU Strategy towards China: Implementation of the 1998 Communication and Future Steps for a more Effective EU Policy', COM(2001)265 final
5. DG RELEX/H/2, National Indicative Programme 2005-2006: China
6. Commission Working Documents, China Strategy Paper 2002-2006
7. Commission Working Documents, China Strategy Paper 2007-2013